

(21,276.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 212.

WILSON R. HUNTER, PLAINTIFF IN ERROR,

vs.

MUTUAL RESERVE LIFE INSURANCE COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a New York Supreme Court, Appellate Division, Second Department.

WILSON R. HUNTER, Plaintiff,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Agreed Statement of Facts and Submission of Controversy.

Paul Armitage, Plaintiff's Attorney, 280 Broadway, New York City, N. Y.

George Burnham, Jr., Defendant's Attorney, 309 Broadway, New York City, N. Y.

1 New York Supreme Court, Appellate Division, Second Department.

WILSON R. HUNTER, Plaintiff,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Statement under Rule 41.

The agreed statement of facts and submission of controversy hereinafter set forth were duly filed in the office of the Clerk of the County of Westchester on the 17th day of March, 1904. There has been no change in the parties herein.

2 Supreme Court, County of Westchester.

WILSON R. HUNTER, Plaintiff,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Agreed Statement of Facts and Submission of Controversy.

The following question in difference between Wilson R. Hunter, the plaintiff above named, a person of full age and a citizen of the State of New York, and the Mutual Reserve Life Insurance Company, the defendant above named, a domestic corporation, is hereby submitted to the Appellate Division of the Supreme Court of the State of New York in and for the Second Judicial Department, to wit:

Whether the said Wilson R. Hunter is entitled to recover judgment against the said Mutual Reserve Life Insurance Company for the sum of one thousand and twenty-one and 51/100, with interest thereon from May 5, 1902; and for the further sum of two thousand three hundred and ninety-two and 38/100 (\$2,392.38) dollars, with interest thereon from May 5, 1902; and for the further sum of two

thousand three hundred and ninety-two and 38/100 (\$2,392.38) dollars, with interest thereon from May 5, 1902; and for the further sum of two thousand nine hundred and eighty-six and 18/100 (\$2,986.18) dollars, with interest thereon from May 5, 1902;

3 and for the further sum of one thousand one hundred and seventy-two and 92/100 (\$1,172.92) with interest thereon from May 5, 1902, making in all the sum of nine thousand nine hundred and sixty-five and 37/100 (\$9,965.37) dollars, with interest thereon as aforesaid, or any part thereof, together with costs.

The following case is agreed upon by said parties, containing a statement of the facts upon which the said controversy hereby submitted depends:

First. The Mutual Reserve Fund Life Association was at all the times herein named, prior to the 17th day of April, 1902, a domestic corporation organized for and transacting the business of life insurance upon the cooperative or assessment plan under the laws of the State of New York, originally incorporated on February 9th, 1881, under Chapter 267 of the laws of 1875, and re-incorporated on December 26th, 1883, under Chapter 175 of the laws of 1883 of the State of New York, pursuant to the provisions of said last mentioned Act; and on the 17th day of April, 1902, the said Mutual Reserve Fund Life Association duly amended its Charter and re-incorporated as a mutual life insurance company, under the name of the Mutual Reserve Life Insurance Company under and pursuant to and in compliance with the terms and provisions of Section 52 of the Insurance Law of the State of New York, being Section 52 of Chapter 690 of the laws of 1892, as amended by Chapter 725 of the laws of 1893, and by Chapter 722 of the laws of 1901, of the State of New York.

Second. That in the year 1876 the following statute, which had been theretofore duly adopted by the Legislature of the State of North Carolina, took effect and was then and thereafter in force, namely:

"Section 3, Chapter 157, Laws of 1876-77, of North Carolina.

"SEC. 3. No insurance company, association or partnership, not incorporated by the laws of this state shall directly or indirectly issue policies, take risks or transact business in this state, until it shall have appointed an agent residing in this state who shall act in that capacity until a successor be duly appointed, and upon whom any civil process may be served, and such service shall be binding and shall be personal service upon the company appointing him; a certificate of such appointment under the seal of the company shall be filed with the secretary of state, and copies certified by him shall be sufficient evidence; and this certificate shall contain a stipulation that in case of the death, absence or removal from the state of such agent, the company shall forthwith appoint another agent in his stead, and failing to do so, the secretary of state shall make such appointment, notifying the company thereof; and if such company withdraw from or cease to do business in this state, service upon such agent shall nevertheless be binding

and deemed a personal service upon such company, so long as any liability remains outstanding against the company in this state."

Third. Prior to March 13, 1883, the said Mutual Reserve Life Insurance Company had duly complied with the provisions of said Chapter 157 of the Laws of 1876-77 of North Carolina above set forth, and was duly admitted to transact business in the said State.

Fourth. On March 7, 1883, the Legislature of the State of North Carolina duly adopted the following statute, which took effect and was then and thereafter in force, namely:

"Sec. 1, Chapter 57 Laws of 1883, being the same as Section 3061 Volume 2 of the Code of the State of North Carolina.

"SEC. 3061. Unlawful to contract or solicit insurance with resident of state without a license; contracts entered into otherwise than provided in this chapter not enforceable in state courts. 1883, c. 57, S. 1.

"No person, whether natural or corporate, either as principal or as agent, shall do, or contract for, or solicit any insurance business with any resident of this state unless such insurance business shall have been licensed, as provided in this chapter, and no contract for any such insurance business entered into otherwise than as *as* this chapter permits shall be enforceable in any of the Courts of this State.

"Section 2 Chapter 57 laws of 1883, being the same as Section 3062 Volume 2 of the Code of the State of North Carolina.

"SEC. 3062. Secretary of State to issue licenses; conditions. 1883, c. 57, s. 2.

"The secretary of state may issue licenses to do insurance business but before the issue of any license the applicant therefor shall:

"(1) Appoint a general agent who shall be a citizen and a resident of this state, and file a certificate of such appointment, under the seal of the applicant, together with the written acceptance thereof by such appointee with the secretary of state, and copies of such certificate of appointment and of such acceptance, certified by the said secretary, shall be received as sufficient evidence of such appointment and acceptance before any court in this state, and such certificate shall contain a stipulation agreeing that so long as there may be any liability on the part of the applicant, under any contract entered into in pursuance of any law concerning insurance, any legal process affecting the applicant may be served in his absence upon such general agent, or upon the secretary of state, and when so served, shall have the same effect as if served personally on such applicant in this state: Provided, when such service is made upon the secretary of state it shall be his duty to transmit at once a copy of the process to the home office of the company.

"(2) File in the office of the secretary of state in such form and in such detail as he shall prescribe, a statement of the business standing and financial condition of the applicant on the preceeding thirty-first day of December, signed and sworn to by said principal, or by the chief managing agent or officer thereof, before the secretary of state, or before a commissioner of affidavits for North Carolina, or before some notary public.

"(3) File in the office of the secretary of state a copy of the char-

ter, articles of association, or other statement, showing the mode in which the applicant proposes to do business.

"(4) Pay the license and other fees required by this chapter."

Fifth. Prior to March 13, 1883, the said Mutual Reserve Life Insurance Company, under its former name of Mutual Reserve Fund Life Association, had duly complied with the provisions of the said Chapter 57 of the Laws of 1883 of North Carolina above set forth, and was duly admitted to transact business in the said State.

Sixth. On March 6, 1899, the Legislature of the State of North Carolina duly adopted the following statute, known as the Willard Law, which took effect and was then and thereafter in force, namely:

"Chapter 54 of the Laws of 1899 of North Carolina.

"SEC. 3. There is hereby established a separate and distinct department which shall be charged with the execution of laws passed in relation to insurance and other subjects placed under this department. The chief officer of said department shall be denominated the insurance commissioner. He shall be paid an annual

salary of two thousand dollars, to be paid in monthly installments, which salary shall be in full for all services performed by said commissioner in any capacity, and all fees and moneys collected by him shall be paid into the state treasury monthly.

"SEC. 16. When legal process is served upon him as attorney for a foreign company, under the provisions of section sixty-two, he shall forthwith notify the company of such service by letter prepaid and directed to its secretary, or in the case of a foreign country, to its resident manager, if any, in the United States; and shall within two days after such service forward in the same manner a copy of the process served on him to such secretary or manager, or to such other person as may have been previously designated by the company by written notice filed in the office of the commissioner. As a condition of a valid and effectual service and of the duty of the commissioner in the premises, the plaintiff in such process shall pay to the insurance commissioner at the time of service thereof the sum of two dollars, which the said plaintiff shall recover as taxable costs if he prevails in his suit. The insurance commissioner shall keep a record of all such proceedings which shall show the day and hour of service.

"SEC. 62. No foreign insurance company shall be admitted and authorized to do business until—

"First. It shall deposit with the insurance commissioner a certified copy of its charter or deed of settlement, and a statement of its financial condition and business, in such form and detail as he may require, signed and sworn to by its president and Secretary or other proper officer, and shall pay for the filing of such statement the sum of twenty dollars.

"Second. It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that it has, if a stock company, a fully paid up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less

than (\$100,000) one hundred thousand dollars; Provided, that nothing in this subsection shall apply to companies now authorized to do business in this state; and if a mutual company, other than life, that its net cash assets equal to the capital required of like companies on the stock plan; or that it possesses net cash assets of not less than one hundred thousand dollars, or net cash assets of not less than fifty thousand dollars, with also invested assets of not less than one hundred thousand dollars, and, in each case, with additional contingent assets of not less than three hundred thousand dollars, and that such capital or net assets are well invested and immediately available for the payment of losses in this state; and that it insures on any single hazard a sum no larger than one-tenth of its net assets.

"Third. It shall, by a duly executed instrument filed in his office, constitute and appoint the insurance commissioner, or his successor, its true and lawful attorney, upon whom all lawful processes in any action or legal proceedings against it may be served, and therein shall agree that any lawful process against it which may be served upon its said attorney shall be of the same force and validity as if served on the company, and the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this commonwealth. The service of such process shall be made by leaving the same in the hands or office of the insurance commissioner. Copies of such instrument, certified
9 by the insurance commissioner, shall be deemed sufficient evidence thereof, and service upon such attorney shall be deemed sufficient service upon the principal.

"Fourth. It shall appoint as its agent or agents in the state some resident or residents thereof.

"Fifth. It shall obtain from the insurance commissioner a certificate that it has complied with the laws of the state and is authorized to make contracts of insurance.

"SEC. 80. The fees for license issued to any fire, marine or accident insurance company to do business in this State shall be two hundred dollars per annum, and that the fee for license on life insurance companies shall be two hundred and fifty dollars per annum. The fee for license on a company doing a strictly plate glass business, and all other insurance companies not named in this section, shall be one hundred dollars per annum.

"SEC. 117. That chapter twenty-nine, volume eleven of the code; chapter two hundred and ninety-nine, laws of one thousand eight hundred ninety-three (1893); chapter three hundred laws one thousand eight hundred [and] ninety-three (1893); chapter two hundred and seventy (270) and three hundred and twenty-nine (329), and forty-eight (48) laws of one thousand eight hundred [and] ninety-five (1895); chapter one hundred [and] sixty-three (163), and one hundred [and] sixty-seven (167), laws of one thousand eight hundred [and] ninety-seven (1897), are hereby repealed, and any other laws and clauses of laws in conflict with this act be and the same are hereby repealed.

"SEC. 118. This act shall be in force from and after its ratification. Ratified the 6th day of March, A. D. 1899."

Seventh. Pursuant to the statute last referred to, and on the 13th day of April, 1899, said Mutual Reserve Fund Life Association duly executed a power of attorney, as follows:

"Know all men by these presents, that the Mutual Reserve Fund Life Association Company of the City of New York and the State of New York, desiring to transact business in the State of North Carolina in conformity with the laws thereof, does hereby make, constitute and appoint James R. Young, Insurance Commissioner of the State of North Carolina, or his successor, its true and lawful attorney in and for said State, upon whom all lawful processes in any action or legal proceeding against it may be served, subject to and in accordance with all the provisions of the laws of the State of North Carolina now in force, and such other laws as may hereafter be enacted in relation thereto; and said Company does hereby expressly agree that any lawful process against it which may be served upon said James R. Young, Insurance Commissioner, or his successor, shall be of the same force and validity as if served upon this Company, and this authority shall continue in force and irrevocable so long as any liability of the said company remains outstanding in the said State.

"The said company does hereby make, constitute and appoint W. M. Stevenson, of Wilmington, in the county of New Hanover, and State of North Carolina (and a resident of said State, its General Agent to and for said State), upon whom any lawful process may be served, and said Company does hereby stipulate and agree, that any lawful process against it, which may be served upon said General Agent, or his successor, shall be of the same force and effect as if served on said Company in said State.

"In witness whereof, The said Company has to these presents affixed its corporate seal, and caused the same to be subscribed and attested by its President and Secretary, this the 13th day of April, A. D. 1899.

"F. A. BURNHAM, *President*.

"[SEAL.]

CHARLES W. CAMP, *Secretary*."

And the same was duly filed with and in the office of the Commissioner of Insurance of the State of North Carolina on April 17, 1899.

Eighth. After the filing of said power of attorney, but as of April 1st, 1899, the Insurance Commissioner of the State of North Carolina issued to the said Mutual Reserve Fund Life Association a license, as follows:

"No. 37.

"State of North Carolina,
Insurance Department.

"RALEIGH, April 1st, 1899.

"The Mutual Reserve Fund Life Insurance Company of New York, having filed an application with this Department to do business in the State of North Carolina.

"This is to certify, That said Company has complied with the 'North Carolina Insurance Act of 1899,' and is authorized to make in this State contracts of Life Insurance on Assessment Plan.

"And said Company having on the 10th day of April, 1899, paid into this Department the sum of Two Hundred Fifty Dollars, license fee required by law, the said Company is, by these presents, licensed to do the business above named during the Insurance year ending April 1st, 1900, subject to all the provisions of the Laws of this State.

12 "Witness, my hand and official seal, the day and date above written,

"\$250\$.

"JAMES R. YOUNG,

"Insurance Commissioner."

Ninth. Upon February 10, 1899, the following statute known as the Craig Act, was duly adopted by the Legislature of the State of North Carolina, namely:

Chapter 62 of the Laws of 1899 of North Carolina, Entitled "An Act to Provide a Manner in Which Foreign Corporations May Become Domestic Corporations."

"SECTION 1. That every telegraph, telephone, express, insurance, steamboat and railroad company incorporated, created and organized under and by virtue of the laws of any state or government other than that of North Carolina, desiring to own property or to carry on business or to exercise any corporate franchise whatsoever in this state, shall become a domestic corporation of the state of North Carolina by filing in the office of the secretary of state a copy of its charter duly authenticated in the manner directed by law for the authentication of statutes of the state or country under the laws of which such company or corporation is chartered and organized, and a copy of its by-laws duly authenticated by the oath of its secretary. Such corporation shall pay therefor to the secretary of state, to be turned over by him into the state treasury, such fees as are or may be required by law.

"SEC. 2. That if any such charter or by-laws, or any part thereof, filed in the office of the secretary of state shall be in contravention or violation of the laws of this state, such charter or by-laws or such part thereof as are in conflict with the laws of this state shall be
13 null and void in this state.

"SEC. 3. That when any such corporation shall have complied with the provisions of this act above set out, it shall thereupon immediately become a corporation of this state and shall enjoy the rights and privileges and be subject to the liability of corporations of this state the same as if such corporations had been originally created by the laws of this state. It may sue and be sued in all courts of this state and shall be subject to the jurisdiction of the courts of this state as fully as if such corporation were originally created under the laws of the state of North Carolina.

"SEC. 4. That on and after the first day of June, eighteen hun-

dred and ninety-nine, it shall be unlawful for any such corporation to do business or to attempt to do business in this state without having fully complied with the requirements of this act.

"SEC. 5. Any such corporation violating any provision of this act shall forfeit to the state of North Carolina a penalty of two hundred dollars for each and every day after the first day of June, eighteen hundred and ninety-nine, on which such corporation shall have continued to operate or do business without having complied with the requirements of this act. Such penalty shall be recoverable by the treasurer of the state for the benefit of the state of North Carolina, and it shall be his duty to sue for such forfeitures in the superior court of Wake County as the same accrue.

"SEC. 6. No telegraph, telephone, express, insurance, steamboat or railroad company, which is a foreign corporation of another state doing business in North Carolina, shall be allowed to sue in the courts of North Carolina on or after June first, eighteen hundred and ninety-nine, until such foreign corporation has become a domestic corporation, either by a special act of the legislature or under the provisions of this act.

"SEC. 7. No such foreign corporation, mentioned in the preceding section of this act, shall be allowed to enter into a contract in the state of North Carolina on or after the first day of June, eighteen hundred and ninety-nine, nor shall any such contract heretofore or hereafter made or attempted to be made and entered into by such corporation in the State of North Carolina be enforceable by such corporation unless such corporation shall on or before the first day of June, eighteen hundred and ninety-nine, become a domestic corporation under and by virtue of the laws of North Carolina.

"SEC. 8. Any such corporation violating the provisions of this act by doing any business in this state without first becoming a domestic corporation in the manner prescribed by law, shall, in addition to the penalty prescribed in section five of this act, forfeit a penalty of five hundred dollars for each day any such business shall be done by it in the state of North Carolina on and after the first day of June, eighteen hundred and ninety-nine. The amount so forfeited under the provisions of this section shall be recovered by the treasurer of North Carolina and it shall be the duty of said state treasurer to institute suit for same in the Superior Court of Wake County.

"*Provided*, the business contemplated in this section of this act does not embrace such business as is strictly the business of interstate commerce.

"SEC. 9. That all laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

"SEC. 10. That this act shall be in force from and after its ratification.

"Ratified the 10th day of February, A. D. 1899."

15 Tenth. On the 17th day of May, 1899, the said Mutual Reserve Fund Life Association, by its Board of Directors, duly adopted the following preambles and resolutions:

"Whereas:—The Mutual Reserve Fund Life Association has been, for a number of years last past, and still is, licensed to transact the

business of life insurance on the assessment plan in the State of North Carolina; and

"Whereas:—By a recent enactment of the Legislature of that State, known as the Craig Bill, it is required, among other things, that insurance corporations created and organized under and by virtue of the laws of any state or government other than that of North Carolina desiring to own property or to carry on business, or to exercise any corporate franchise whatsoever, within said state shall become a domestic corporation of the said state of North Carolina; and

"Whereas:—It is the sense of this Board that it is neither wise nor prudent for this Association to comply with the provision of said law (the Craig Bill); now therefore be it

Resolved:—By the Board of Directors of the Mutual Reserve Fund Life Association that it does hereby withdraw from the State of North Carolina, and shall forthwith cease the transaction of business therein; that the services of all agents, general or otherwise, in the employ of said Association, and of all local treasurers and collectors within said State of North Carolina, be, and the same hereby are, dispensed with and their employment terminated; and be it further

Resolved:—That the appointments, at any time made, of W. M. Stevenson and of James R. Young as Insurance Commissioner, as the true and lawful attorneys of said Association upon whom lawful processes in any action or legal proceeding against said Association might be served, be, and the same hereby are, canceled, 16 revoked and annul-ed."

And on the 20th day of May, 1899, duly certified and authenticated copies of the same were filed with and in the office of the Hon. James R. Young, then Insurance Commissioner of the State of North Carolina.

Eleventh. The defendant under the name of the Mutual Reserve Fund Life Association transacted the business of life insurance upon the co-operative or assessment plan generally in the State of North Carolina, having local agents in that State, from the year 1883 up to the 17th day of May, 1899.

Twelfth. That policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association, between the year 1883 and the 17th day of May, 1899, have been and are in force in the State of North Carolina, and were in force on January 20 and 21, 1902.

Thirteenth. That on the 18th day of May, 1899, the defendant withdrew all its agents from the State of North Carolina, and since said date has had no agent in the State of North Carolina, this admission being, however, without prejudice to the disputed question as to whether the resolution adopted by the defendant May 17, 1899, purporting to revoke the power of attorney theretofore given to James R. Young, Insurance Commissioner, was effective to revoke and terminate his authority as attorney for service under such power of attorney as regards the plaintiff's assignors.

Fourteenth. That since the 18th day of May, 1899, premiums or

assessments upon policies of the defendant issued by it under its former name of the Mutual Reserve Fund Life Association between the year 1883 and the 17th day of May, 1899, and outstanding in

the State of North Carolina, have been paid to the defendant
17 by being remitted to it direct by mail by the policy-holders at its home office in the City, County and State of New York, where by the terms of the policies such premiums were in each case payable, and such premiums or assessments have been received by the defendant when so remitted by mail at its said home office.

Fifteenth. That since the 18th day of May, 1899, where death losses have occurred in North Carolina under policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association between the year 1883 and the 17th day of May, 1899, the amount of such losses, as adjusted, has from time to time been paid by the defendant to the person entitled to receive the same by mailing a check for the amount of the loss to such person from the home office of the defendant in the City, County and State of New York, where, by the terms of the policies in each case the loss was payable.

Sixteenth. That in June, 1902, a claim was made upon the defendant under a policy issued by the defendant on the life of one Edward Broadhurst, in Washington, in the District of Columbia, where the said Edward Broadhurst resided and died. The validity of this claim was disputed by the defendant and an adjuster was sent to the City of Washington in the District of Columbia, for the purpose of adjusting the loss there. Such adjuster found that the beneficiary resided in the City of Wilmington in the State of North Carolina, and he, therefore, went to that city and adjusted the loss with her there in the month of June, 1902. The adjustment of this particular loss was the only authority the adjuster had at the time and he was sent to make such adjustment only; he did have authority to make the same.

Seventeenth. That on August 19, 1899, Edwin G. Hill, of New
Bern, North Carolina, who held a policy issued by the de-
18 fendant under its former name of the Mutual Reserve Fund Life Association prior to May 17, 1899, died in the City of New Bern, North Carolina, and claim was made upon the defendant under the said policy, and proofs of loss and claim presented to it at its home office in the City of New York, where, under the terms of the policy, the loss was payable. In January, 1900, the defendant through its proper officer, wrote from its home office in New York to the beneficiary under the policy in New Bern, North Carolina, that it was prepared to pay the loss and would forward check for the amount of the same to the Citizens' Bank of New Bern, North Carolina, where the beneficiary could obtain the same upon payment of two post-mortuary calls or assessments due on the policy. The defendant did so mail said check, and on February 15, 1900, the beneficiary under said policy went to the Citizens' Bank of New Bern, obtained the check, and there handed to the cashier of said bank a check for the two post-mortuary assessments to be transmitted to the defendant.

Eighteenth. That in August, 1902, a claim was made upon the defendant under a policy issued by it under its former name of the Mutual Reserve Fund Life Association prior to May 17, 1899, on the life of one Stanley Bratcher, for \$1,000. This claim was disputed by the defendant, and suit was threatened. At that time Col. John W. Hinsdale was a member of the Bar of the State of North Carolina, and had been at times retained by the defendant, and upon the threat of suit in the Bratcher case the defendant retained Col. Hinsdale as an attorney, and he subsequently, during the month of August, 1902, arranged a compromise of the case for \$475/ and drew his draft on the defendant for that amount, which was paid by the defendant on presentation of said draft to it at its home office in the City of New York. The negotiations had by Col. Hinsdale with the other side with reference to this claim were had in the month of August, 1902, in the City of New Bern, North Carolina.

19 Nineteenth. That on the 21st day of January, 1886, the defendant under its former name of the Mutual Reserve Fund Life Association issued and delivered to one Mary E. Carstarphen, in the State of North Carolina, its policy for \$5,000. In October, 1899, Mrs. Carstarphen wrote from North Carolina to the defendant at its home office in the City, County and State of New York, a letter requesting that the amount of her policy be reduced from \$5,000 to \$2,000. The defendant wrote in reply from its home office that upon receipt by it of the old policy of \$5,000 it would re-write the same for \$2,000, and Mrs. Carstarphen mailed the policy to the defendant at its home office in New York, and on October 17, 1899, at such home office, the defendant re-wrote the said policy for \$2,000 instead of \$5,000, and mailed the re-written policy to Mrs. Carstarphen from the *the* home office of the defendant to her in North Carolina.

Twentieth. At all the times mention- herein the Superior Court of Craven County, in the State of North Carolina, was a Court of general jurisdiction, duly created by the laws of said State.

Twenty-first. At all the times herein mentioned there were in force in the State of North Carolina the following statutes, applicable to actions brought in the Superior Court:

"Section 194, Volume 1, of the Code of North Carolina.

"SEC. 194. Actions against foreign corporations, where and by whom brought, C. C. P., s. 361. 1876-'7, c. 170.

"An action against a corporation created by or under the laws of any other state, government, or country, may be brought in the superior court of any county in which the cause of action arose, or in which it usually did business, or in which it has property, or in which the plaintiffs, or either of them, shall reside, in
20 the following cases.

"(1) By a resident of this state for any cause of action.

"(2) By a plaintiff not a resident of this state, when the cause of action shall have arisen, or the subject of the action shall be situated within this state.

"Section 195, Volume 1, of the Code of North Carolina.

"SEC. 195. Change of place of trial. C. C. P., s. 69.

"If the county designated for that purpose in the summons and complaint, be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant, before the time of answering expires, demand in writing that the trial be had in the proper county, and the place of trial be thereupon changed by consent of parties, or by order of the court.

"The court may change the place of trial in the following cases:

"(1) When the county designated for that purpose is not the proper county.

"(2) When the convenience of witnesses and the ends of justice would be promoted by the change.

"(3) When the judge shall have been, at any time, interested as party or counsel. When the place of trial is changed all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed, or by order of court, and the papers shall be filed or transferred accordingly.

21 "Section 199, Volume I, of the Code of North Carolina as follows:

"SEC. 199. Civil actions commenced by summons. C. C. P., s. 70.

"Civil Actions shall be commenced by issuing a summons.

"Section 200, Volume 1 of the Code of North Carolina as follows:

"SEC. 200. Summons in actions returnable to a regular term of the Superior Court. 1876-'7, c. 85, s. 1.

"The summons shall run in the name of the State be signed by the clerk of the Superior Court having jurisdiction to try the action, and shall be directed to the sheriff or other proper officer of the county in which the defendant or one or more of the defendants, resides or may be found. It shall be returnable to the regular term of the superior court of the county, where the plaintiff, or one or more of them, or the defendant, or one or more of them, resides, and from which it issued; and shall command the sheriff, or other proper officer, to summon the defendant, or defendants, to appear at the next ensuing term of the superior court and answer the complaint of the plaintiff, and shall be dated on the day of its issue. The officer to whom the summons is addressed shall note on it the day of its delivery to him, and shall execute it at least ten days before the beginning of the term to which it shall be returnable, and shall return it on the first day of the term.

22 "Section 217, Volume 1 of the Code of North Carolina as follows:

"SEC. 217. Manner of service of summons. C. C. P. s. 82. 1874-5, c. 168, s. 1.

"The summons shall be served by delivering a copy thereof in the following cases:

"(1) If the action be against a corporation to the President or other head of the corporation, Secretary, cashier treasurer, director, managing or local agent thereof; Provided, that any person receiving or collecting moneys within this state for, or on behalf of, any corporation of this or any other state or government, shall be deemed a local agent for the purpose of this section; but such service can be made in respect to a foreign corporation only when it has property within this State, or the cause of action arose therein, or when the plaintiff resides in the state, or when such service can be made within the state, personally upon the president, treasurer or secretary thereof."

Twenty-second. Upon the 18th day of September, 1901, the Supreme Court of the State of North Carolina, in the case of Moore v. Mutual Reserve Fund Life Ass'n, rendered the following decision:

"Decision of the Supreme Court of the State of North Carolina in the case of Moore vs. Mutual Reserve Fund Life Association, Volume 129, page 31 as follows:

"Moore vs. Mutual Reserve Fund Life Association.

"(1) Power of Attorney—Irrevocable—Insurance—Acts 1899, Chap. 54 Sec. 62, Subd. 3.

"A power of attorney conferred on the insurance commissioner by an insurance company in conformity with Acts 1899, 23 Chap. 54, Sec. 62, Subd. 3, is irrevocable so long as the company has liabilities in this state remaining unsatisfied.

"(2) Service of Process—Process—Insurance.

"Service of process on State Insurance Commissioner made in conformity with Acts 1899, Chap. 54, Sec. 62 Subd. 3 is valid, although the insurance company has not domesticated under Acts 1899, Chap. 62.

"Action by L. J. Moore and others against the Mutual Reserve Fund Life Association, heard by Judge A. L. Coble, at Spring Term, 1901, of the Superior Court of Craven County. From a judgment for the defendant, the plaintiffs appealed.

"Simmons & Ward, and W. W. Clark, for the plaintiffs.

"Hinsdale & Lawrence, Sheppard & Sheppard, and T. B. Womack, for the defendant.

"FURCHES, C. J.:

"This appeal involves identically the same question, and no more, than was decided by this Court at its last term, in Biggs vs. Life Association, 128 N. C., 5, and we are bound to reverse the judgment appealed from in this case, or to reverse the judgment of this Court made at its last term. There is no question of the importance of this that may not be sustained by argument on either side.

"While the defendant stands before this Court just as any other foreign corporation would stand, it does not stand just as an in-

dividual would stand. The Legislature would have no power to prescribe terms to an individual as to whether he should be allowed to do business in this State. He would have the natural and constitutional right to do business here, without the permission or comity of the State. That is not so with the defendant. It had no right to do business here without the permission of the State. This being

24 so, the State had the right to prescribe the terms upon which the defendant might carry on its business here. The State having this right, prescribed the terms and the defendant accepted them, and proceeded with its business. The defendant being permitted, proceeded to make contracts with the citizens of the State, and became liable to them under these contracts. One of the provisions upon which the defendant was allowed to do business here was that James R. Young, Insurance Commissioner, and his successors in office should be constituted its agent, upon whom service of process might be made, and that said agency should continue so long as the defendant had any liabilities remaining unsatisfied in this State arising from or out of its said business of insurance. The plaintiff alleges that the defendant is liable to him for a breach of its contract of insurance—a liability of the defendant remaining unsatisfied. If plaintiff's contentions are true, there is still a remaining liability of the defendant unsatisfied. The object of this action is to try that very question, is the defendant liable to the plaintiff upon a breach of its contract of insurance?

"But the defendant comes into Court, makes a special appearance, and in the face of the agreement upon which it was allowed to do business here, denies that it has violated its contract with the plaintiff; and therefore plaintiff has no such claim against it, as plaintiff alleges and for that reason (that is, because the defendant says it is not liable to the plaintiff for anything) the action must stop. We cannot adopt such arguments. It was the duty of the state to protect its citizens against such practices as it seems to us is attempted in this case. It seems to use that the defendant is improperly attempting to evade a liability it has incurred with one of its patrons it had induced to deal with it.

25 "We do not feel called upon to discuss the question of revocability of this power to Young, further than to say that the time fixed in the act of the legislature and in the power itself has not yet been reached, as the defendant admits that it still has outstanding liabilities in this State. It is conceded that, as a general rule, a principal has the right to revoke a power of attorney at any time, whether it is in terms irrevocable or not. But to this general rule there are well-established exceptions as where it is coupled with an interest, or where it is contractual in its nature, given for a consideration and for the protection of some one, or some interest. In our opinion this power falls under this exception to the general rule. It was contractual in its nature: was given upon consideration that defendant should have the right to carry on its business in this state, and for the protection of those who should deal with the defendant.

"We have not cited authorities as we find them cited in the case of Biggs v. this defendant, 128 N. C. 5.

"There is error, and the judgment of the Court below is reversed.

"The cases of Taylor v. Life Association, St. John's Lodge v. Life Association, Hancock v. Life Association, Pope v. Life Association, Moore & Wife v. Life Association, Foy v. Life Association, Barnum v. Life Association, Tisdale and wife v. Life Association, Tisdale and Hackburn v. Life Association, all involved the same point as that involved in Moore v. Life Association, and were argued together. And upon the ruling of the Court in the first case (Moore v. Life Association) the judgment of the Court below is reversed in all of them.

"Reversed."

Twenty-third. Upon the 5th day of March, 1901, the Supreme Court of the State of North Carolina, in the case of Biggs v. Life Ass'n, rendered the following decision:

26 "Biggs vs. Life Association. Filed March 5, 1901.

"(1) Power of Attorney—Irrevocable—Insurance Acts 1899, ch. 54.

"A power of attorney made in conformity with Acts 1899, ch. 54 Sec. 62, subd. 3, is irrevocable.

"(2) Process—Service—Insurance.

"Service of Process upon State Insurance Commissioner is valid notwithstanding the insurance company attempted to annul the power of attorney conferred upon him under Acts 1899, ch. 54, Sec. 62, Subd. 3, and did not domesticate under Acts 1899 ch. 62.

"Action by Noah Biggs against the Mutual Reserve Fund Life Association, heard by Judge A. L. Coble, upon agreed state of facts, at November Term, 1900, of Halifax County Superior Court. From a judgment for defendant, the plaintiff appealed.

"W. A. Dunn and Spier Whitaker for the plaintiff.

"J. W. Hinsdale, Shepherd & Shepherd and R. C. Lawrence, for the defendant.

"CLARK, J.:

"By virtue of chap. 54, sec. 62 sub-sec. 3, laws of 1899, one of the conditions precedent upon which a foreign insurance company should be authorized to do business in this state was that such company should file a duly executed instrument with the Insurance Commissioner, appointing him its attorney, upon whom all lawful process against said Company could be served, "the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this commonwealth." The defendant accepted these terms, and on 13th April, 1899, filed its duly executed power of attorney to the required purport with the Insurance Commissioner wherein it is stipulated and agreed by said company, "said company, does hereby expressly agree that
27 any lawful process against it, which may be served upon said James R. Young, Insurance Commissioner, or his suc-

cessor, shall be of the same force and validity as if served upon the company, and this authority shall continue in force irrevocable so long as any liability of said company remains outstanding in the said state.

"The state had the right to prescribe the conditions upon which a non-resident corporation would be permitted to do business here. *Paul v. Virginia*, 75 U. S., 168, and cases cited thereunder: 7 Notes U. S. Rep., 33; 6 *Thomp. Corp.*, Sec. 8028, *Gibson v. Insurance Co.*, 144 Mass. 81; *Parks v. Accident Association*, 100 Iowa 466, *Strauss v. Insurance Co.*, 126 N. C., 223. The object in requiring some one to be appointed upon whom process could be served is apparent. If that appointment could be revoked by the company at will, the end sought to be obtained would be as illusory as a will o' the wisp, which fleets when it is sought to grasp it. The defendant has, since 17th May, 1899, ceased to do any business in this State. 'through any local officer or agent.'"

"Without discussing whether it is 'Ceasing to do business in this State,' to transact that business through agents located outside the state by means of the mail (*Insurance Co. v. Spratley*, 172 U. S. 603) it is sufficient to point out that the statute requires the power of attorney to be irrevocable not 'as long as the company continues to do business' in this State, but as long as 'any liability of the company remains outstanding' in this State, and the contract with the State as expressed in the power of attorney filed by the company so specifies. No amount of authorities having a more or less fancied analogy can overcome these plain words of the statute and of the power of attorney drawn and filed in conformity thereto. *Green v.*

Life Association, 105 Iowa 628, *Insurance Co. v. Gillet*, 54 Md. 213. Indeed it does not even appear that the defendant has ceased doing business in this state, otherwise than through local agents. *Insurance Co. v. Spratley*, 172 U. S. 603.

"The plaintiff seeks to enforce an outstanding liability against the defendant, and the service of process upon the Insurance Commissioner was valid service.

"The fact that the defendant's attempt to become a domestic corporation of this state under the terms of the 'Craig Law,' chp. 62, Laws of 1899, was declared to be a nullity and the defendant was held not to be a domestic corporation, has no bearing upon this question.

"Upon the facts agreed the judgment of the Court below was erroneous and must be reversed.

"Reversed."

Twenty-fourth. Upon February 2, 1895, the said Mutual Reserve Life Insurance Company, under its former name of Mutual Reserve Fund Life Association, entered into and made a contract of insurance with and on the life of Benjamin T. Bardin, a citizen of North Carolina, and issued its certain certificate of membership or policy of insurance as evidence thereof, to the said Benjamin T. Bardin, and transmitted the same to said Benjamin T. Bardin upon the said February 2, 1885, to the City of Fair Bluffs, in the State of North Carolina, where the said Benjamin T. Bardin then resided.

Twenty-fifth. On January 20, 1902, a summons was issued out of the said Superior Court for the County of Craven, in the State of North Carolina, at the instance of and in favor of one Rufus W. Hicks, a citizen of and resident of said County of Craven in the state of North Carolina, as follows:

29 "Craven County, in the Superior Court.

"RUFUS W. HICKS

"against

"MUTUAL RESERVE FUND LIFE ASSOCIATION.

"Summons for Relief.

"The State of North Carolina to the Sheriff of Wake County, Greeting:

"You are hereby commanded to summon Mutual Reserve Fund Life Association, the defendant above named, if it be found within your County, to be and appear before the Judge of our Superior Court, at a Court to be held for the County of Craven at the Court House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let the said Defendant take notice that if it fail to answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not, and of this Summons make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

"WM. WATSON,

Clerk Superior Court."

"[SEAL.]

Twenty-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

"Rufus W. Hicks vs. Mutual Reserve Fund Life Association. Summons for relief served January 21st, 1902, by exhibiting the within summons and by delivering a copy thereof to J. R. Young, insurance commissioner of North Carolina. At the same time I paid to him \$2.00 as required by law. Receipt hereto attached."

Twenty-seventh. As stated in the said return, the sheriff of Wake County of North Carolina did on the 21st day of January, 1902, exhibit to J. R. Young, then insurance commissioner of the State of North Carolina, the original of said summons and did deliver to the said J. R. Young, as such insurance commissioner, a copy of the said summons, and did pay to the said J. R. Young, insurance commissioner, the sum of \$2.00, the fees required by law therefor.

Twenty-eighth. Thereafter and on the same day, to wit: January

21, 1902, the said J. R. Young, as insurance commissioner of the State of North Carolina, wrote and mailed to the Secretary of the defendant herein the following letter:

"RALEIGH, January 21, 1902.

"Secretary of Mutual Reserve Fund Life Association, New York City.

"GENTLEMEN: As required under our law, I take pleasure in enclosing you a copy of the summons this day served upon me in the case of Rufus W. Hicks against the Mutual Reserve Fund Life Association. The summons is issued from the County of Craven. If I can serve you further in the matter, kindly advise me.

"Very truly yours,

J. R. YOUNG,

"Insurance Commissioner."

which in due course of mail was received by the Secretary of said defendant at the office thereof in the State of New York, and in which was enclosed when mailed and received, a copy of said summons.

31 Twenty-ninth. Within the time required by law the plaintiff named in said summons filed in the Superior Court of Craven County in said State a complaint in the said action, in which complaint was set forth a cause of action against the said Mutual Reserve Fund Life Association to recover damages for the breach of said contract of insurance made by and between said Benjamin T. Bardin and the said Mutual Reserve Fund Life Association dated February 2, 1885, and assigned to Rufus W. Hicks upon March 14, 1885, said breach claimed being the increase of assessments demanded by the said Mutual Reserve Fund Life Association from said Rufus W. Hicks upon December 1, 1898, the amount of damages claimed in said complaint being all assessments and dues paid on account of the said policy of insurance and amounting in all to the sum of twelve hundred dollars (\$1,200), with interest on each payment of each assessment from the date thereof.

Thirtieth. At all the times herein mentioned, the said Benjamin T. Bardin and Rufus W. Hicks were and now are citizens and residents of the State of North Carolina.

Thirty-first. That no answer or appearance by or on behalf of the said Mutual Reserve Fund Life Association was at any time interposed or entered in the said action of the said Rufus W. Hicks, in the Superior Court of Craven County, in the State of North Carolina.

Thirty-second. That at the May Term, 1902, of the said Superior Court, for Craven County, in the State of North Carolina, duly and regularly called and held, commencing the 5th day of May, 1902, judgment by default was rendered upon the complaint so filed as aforesaid, and on the return or service made as hereinbefore set forth and described against the said Mutual Reserve Fund Life Association, and in favor of the said Rufus W. Hicks for the sum of

32 one thousand one hundred and fifty-three and 97/100 (\$1,153.97) dollars, with interest thereon from the 5th day of May, 1902, together with eighteen and 95/100 (\$18.95) dollars costs.

Thirty-third. Thereafter said judgment was duly assigned by mesne assignments to the plaintiff Wilson R. Hunter.

Thirty-fourth. Upon April 19, 1888, the said Mutual Reserve Fund Life Association entered into and made a contract of insurance with and on the life of Ina C. Davis, who then and at all times herein mentioned was and now is a citizen and resident of the State of New Jersey, and issued its certain certificate of membership or policy of insurance as evidence thereof, and the said certificate of membership or policy of insurance was transmitted on the said date, April 19, 1888, to the said Ina C. Davis at the City of Newark, New Jersey, where he then resided.

Thirty-fifth. Upon January 20, 1902, a summons was issued out of the said Superior Court for the County of Craven in the State of North Carolina at the instance of and in favor of Enoch Wadsworth and Ina C. Davis of whom the said Enoch Wadsworth then and at all times herein mentioned was and now is a citizen and resident of the State of North Carolina, as follows:

Craven County, in the Superior Court.

"ENOCH WADSWORTH and INA C. DAVIS
"against

"MUTUAL RESERVE FUND LIFE ASSOCIATION.

Summons for Relief.

"The State of North Carolina to the Sheriff of Wake County,
Greeting:

"You are hereby commanded to summon Mutual Reserve Fund Life Association, the defendant above named, if it be found
33 within your County, to be and appear before the Judge of our Superior Court, at a Court to be held for the County of Craven at the Court House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let the said Defendant take notice that if it fail to answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not, and of this Summons *mons* make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

"[SEAL.]

WM. WATSON,
Clerk Superior Court."

Thirty-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

"Enoch Wadsworth and Ina C. Davis vs. Mutual Reserve Fund

House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let said Defendant take notice that if it fail to

37 answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not, and of this Summons make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

"[SEAL.]

WM. WATSON,
"Clerk Superior Court."

Forty-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

"Enoch Wadsworth and Isaac Meinhard vs. Mutual Reserve Fund Life Association. Summons for relief served January 21st, 1902, by exhibiting the within summons and by delivering a copy thereof to J. R. Young, insurance commissioner of North Carolina. At the same time I paid to him \$2.00 as required by law. Receipt hereto attached."

Forty-seventh. As stated in the said return, the sheriff of Wake County of North Carolina did on the 21st day of January, 1902, exhibit to J. R. Young, then insurance commissioner of the State of North Carolina, the original of said summons and did deliver to the said J. R. Young, as such insurance commissioner, a copy of the said summons, and did pay to the said J. R. Young, insurance commissioner, the sum of \$2.00, the fees required by law therefor.

Forty-eighth. Thereafter and on the same day, to wit: January 21, 1902, the said J. R. Young, as insurance Commissioner of the State of North Carolina, wrote and mailed to the Secretary of the defendant herein the following letter:

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"RALEIGH, January 21, 1902.

"Secretary of the Mutual Reserve Fund Life Association, New York City.

"GENTLEMEN: As required under our law, I take pleasure in enclosing you a copy of the summons this day served upon me in the case of Enoch Wadsworth and Isaac Meinhard against the Mutual Reserve Fund Life Association. The summons is issued from the County of Craven. If I can serve you further in the matter, kindly advise me.

"Very truly yours,

"J. R. YOUNG,
"Insurance Commissioner."

which in due course of mail was received by the secretary of said defendant at the office thereof in the State of New York, and in which was enclosed when mailed and received, a copy of said summons.

Forty-ninth. Within the time required by law the plaintiffs named in said summons filed in the Superior Court of Craven County in the State of North Carolina a complaint in the said action, in which complaint was set forth a cause of action against the said Mutual Reserve Fund Life Association to recover damages for the breach of said contract of insurance made by and between the said Isaac Meinhard and the said Mutual Reserve Fund Life Association upon March 13, 1883, assigned to the said Enoch Wadsworth upon January 11, 1902, said breach claimed being the increase of assessments demanded from said Isaac Meinhard upon August 1, 1898, under said policy. The amount of damages claimed in said complaint by the said plaintiff Enoch Wadsworth being all assessments and dues paid on account of the said policy of insurance, and amounting in all to the sum of one thousand four hundred twenty-five and 21/100 (\$1,425.21) dollars with interest on each payment of each assessment from the date thereof.

39 Fiftieth. At all the times herein mentioned the said Isaac Meinhard was and now is a citizen and a resident of the State of New York, and at the same times the said Enoch Wadsworth was and now is a citizen and resident of the State of North Carolina.

Fifty-first. That no answer or appearance by or on behalf of the said Mutual Reserve Fund Life Association was at any time interposed or entered in the said action of the said Enoch Wadsworth and Isaac Meinhard in the Superior Court of Craven County, in the State of North Carolina.

Fifty-second. That at the May Term, 1902, of the said Superior Court, for Craven County, in the State of North Carolina, duly and regularly called and held, commencing the 5th day of May, 1902, judgment by default was rendered upon the complaint so filed as aforesaid, and on the return of service made as hereinbefore set forth and described against the said Mutual Reserve Fund Life Association, and in favor of the said Enoch Wadsworth for the sum of two thousand three hundred seventy-three 43/100 dollars (\$2373.43), with interest thereon from the 5th day of May, 1902, together with eighteen and 95/100 dollars (\$18.95) costs.

Fifty-third. Thereafter said judgment was duly assigned by mesne assignments to the plaintiff Wilson R. Hunter.

Fifty-fourth. Upon March 13, 1883, the said Mutual Reserve Fund Life Association entered into and made a certain other contract of insurance with and on the life of Isaac Meinhard who then and at all times herein mentioned was and now is a citizen and resident of the State of New York, and issued its certain certificate of membership or policy of insurance as evidence thereof, and the said certificate of membership or policy of insurance was
40 transmitted on the said date, March 13, 1883, to the said Isaac Meinhard at the City of New York, where he then resided.

Fifty-fifth. Upon January 20, 1902, a summons was issued out of the said Superior Court for the County of Craven in the State of North Carolina at the instance of and in favor of Enoch Wadsworth

and Isaac Meinhard of whom the said Enoch Wadsworth then and at all times herein mentioned was and now is a citizen and resident of the State of North Carolina, as follows:

"Craven County, in the Superior Court.

"ENOCH WADSWORTH and ISAAC MEINHARD
"against
"MUTUAL RESERVE FUND LIFE ASSOCIATION.

"Summons for Relief.

"The State of North Carolina to the Sheriff of Wake County, Greeting:

"You are hereby commanded to summon Mutual Reserve Fund Life Association, the defendant above named, if it be found within your County, to be and to appear before the Judge of our Superior Court, at a Court to be held for the County of Craven at the Court House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let the said Defendant take notice that if it fail to answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not, and of this summons make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

[SEAL.]

WM. WATSON,
"Clerk Superior Court.

41 Fifth-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

"Enoch Wadsworth and Isaac Meinhard vs. Mutual Reserve Fund Life Association. Summons for relief served January 21st, 1902, by exhibiting the within summons and by delivering a copy thereof to J. R. Young, insurance commissioner of North Carolina. At the same time I paid to him \$2.00 as required by law. Receipt hereto attached."

Fifty-seventh. As stated in the said return, the sheriff of Wake County of North Carolina did on the 21st day of January, 1902, exhibit to J. R. Young, then insurance commissioner of the State of North Carolina, the original of said summons and did deliver to the said J. R. Young, as such insurance commissioner, a copy of the said summons, and did pay to the said J. R. Young, insurance commissioner, the sum of \$2.00, the fees required by law therefor.

Fifty-eighth. Thereafter and on the same day, to wit: January 21, 1902, the said J. R. Young, as insurance commissioner of the

State of North Carolina, wrote and mailed to the Secretary of the defendant herein the following letter:

"RALEIGH, January 21, 1902.

"Secretary of Mutual Reserve Fund Life Association, New York City.

"GENTLEMEN: As required under our law, I take pleasure in enclosing you a copy of the summons this day served upon me in the case of Enoch Wadsworth and Isaac Meinhard against the Mutual Reserve Fund Life Association. The summons is issued from the County of Craven. If I can serve you further in the matter, kindly advise me.

"Very truly yours,

"J. R. YOUNG,

"Insurance Commissioner."

which in due course of mail was received by the Secretary of said defendant at the office thereof in the State of New York, and in which was enclosed when mailed and received, a copy of said summons.

Fifth-ninth. Within the time required by law the plaintiffs named in said summons filed in the Superior Court of Craven County in the State of North Carolina a complaint in the said action, in which complaint was set forth a cause of action against the said Mutual Reserve Fund Life Association to recover damages for the breach of said contract of insurance made by and between the said Isaac Meinhard and the said Mutual Reserve Fund Life Association upon March 13, 1888, assigned to the said Enoch Wadsworth upon January 11, 1902, said breach claimed being the increase of assessments demanded from said Isaac Meinhard upon August 1, 1898, under said policy. The amount of damages claimed in said complaint by the said plaintiff Enoch Wadsworth being all assessments and dues paid on account of the said policy of insurance and amounting in all to the sum of one thousand four hundred twenty-five 21/100 (\$1,425.21) dollars with interest on each payment of each assessment from the date thereof.

Sixtieth. At all the times herein mentioned the said Isaac Meinhard was and now is a citizen and a resident of the State of New York, and at the same times the said Enoch Wadsworth was and now is a citizen and resident of the State of North Carolina.

Sixty-first. That no answer or appearance by or on behalf of the said Mutual Reserve Fund Life Association was at any time interposed or entered in the said action of the said Enoch Wadsworth and Isaac Meinhard in the Superior Court of Craven County, in the State of North Carolina.

Sixty-second. That at the May Term, 1902, of the said Superior Court, for Craven County, in the State of North Carolina, duly and regularly called and held, commencing the 5th day of May, 1902, judgment by default was rendered upon the complaint so filed as aforesaid, and on the return of service made as hereinbefore set forth and described against the said Mutual Reserve Fund Life Association,

and in favor of the said Enoch Wadsworth for the sum of two thousand three hundred seventy-three $43/100$ (\$2,373.43 dollars, with interest thereon from the 5th day of May, 1902, together with eighteen and $95/100$ (\$18.95) dollars costs.

Sixty-third. Thereafter said judgment was duly assigned by mesne assignments to the plaintiff Wilson R. Hunter.

Sixty-fourth. Upon March 19, 1886, the said Mutual Reserve Fund Life Association entered into and made a contract of insurance with and on the life of Herbert G. Armitage, who then and at all times herein mentioned was and now is a citizen and resident of the State of New York, and issued its certain certificate of membership or policy of insurance as evidence thereof, and the said certificate of membership or policy of insurance was transmitted on the said date, March 19, 1886, to the said Herbert G. Armitage, at the City of New York, where he then resided.

Sixty-fifth. Upon January 20, 1902, a summons was issued out of the said Superior Court for the County of Craven in the State of North Carolina at the instance of and in favor of Enoch Wadsworth and Herbert G. Armitage, of whom the said Enoch Wadsworth
 44 then and at all times herein mentioned was and now is a
 citizen and resident of the State of North Carolina, as follows:

"Craven County, in the Superior Court.

"ENOCH WADSWORTH and HERBERT G. ARMITAGE
 "against
 "MUTUAL RESERVE FUND LIFE ASSOCIATION.

"*Summons for Relief.*

"The State of North Carolina to the Sheriff of Wake County, Greeting:

"You are hereby commanded to summon Mutual Reserve Fund Life Association, the defendant above named, if it be found within your County, to be and appear before the Judge of our Superior Court, at a Court to be held for the County of Craven at the Court House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let the said Defendant take notice that if it fail to answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not and of this Summons make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

"[SEAL.]

"WM. WATSON,
 Clerk Superior Court."

Sixty-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

“Enoch Wadsworth and Herbert G. Armitage, vs. Mutual Reserve Fund Life Association summons for relief served January 21st, 1902 by exhibiting the within summons and by delivering a copy thereof to J. R. Young, insurance commissioner of North Carolina. At the same time I paid him \$2.00 as required by law. Receipt hereto attached.”

Sixty-seventh. As stated in the said return, the sheriff of Wake County of North Carolina did on the 21st day of January, 1902, exhibit to J. R. Young, then insurance commissioner of the State of North Carolina, the original of said summons and did deliver to the said J. R. Young, as such insurance commissioner, a copy of the said summons, and did pay to the said J. R. Young, insurance commissioner, the sum of \$2.00, the fees required by law therefor.

Sixty-eighth. Thereafter and on the same day, to wit: January 21, 1902, the said J. R. Young, as insurance commissioner of the State of North Carolina, wrote and mailed to the Secretary of the defendant herein the following letter:

“*RALEIGH, January 21, 1902.*

“Secretary of the Mutual Reserve Fund Life Association, New York City.

“GENTLEMEN: As required under our law, I take pleasure in enclosing you a copy of the summons this day served upon me in the case of Enoch Wadsworth and Herbert G. Armitage against the Mutual Reserve Fund Life Association. The summons is issued from the County of Craven. If I can serve you further in the matter, kindly advise me.

“Very truly yours,

J. R. YOUNG,

“*Insurance Commissioner.*”

which in due course of mail was received by the Secretary of said defendant at the office thereof in the State of New York, and in which was enclosed when mailed and received, a copy of said summons.

Sixty-ninth. Within the time required by law the plaintiffs named in said summons filed in the Superior Court of Craven County in the State of North Carolina a complaint in the said action, in which complaint was set forth a cause of action against the said Mutual Reserve Fund Life Association to recover damages for the breach of said contract of insurance made by and between the said Herbert G. Armitage, and the said Mutual Reserve Fund Life Association upon March 19, 1886, assigned to the said Enoch Wadsworth upon December 14, 1901, said breach claimed being the increase of assessments demanded from said Herbert G. Armitage upon February 1, 1898, under said policy. The amount of damages claimed in said complaint by the said plaintiff Enoch Wadsworth being all assess-

ments and dues paid on account of the said policy of insurance and amounting in all to the sum of one thousand eight hundred seventy-nine $40/100$ (\$1,879.40) dollars with interest on each payment of each assessment from the date thereof.

Seventieth. At all the times herein mentioned the said Herbert G. Armitage was and still is a citizen and a resident of the State of New York, and at the same times the said Enoch Wadsworth was and still is a citizen and resident of the State of North Carolina.

Seventy-first. That no answer or appearance by or on behalf of the said Mutual Reserve Fund Life Association was at any time interposed or entered in the said action of the said Enoch Wadsworth and Herbert G. Armitage in the Superior Court of Craven County, in the State of North Carolina.

Seventy-second. That at the May Term, 1902, of the said Superior Court, for Craven County, in the State of North Carolina,
47 duly and regularly called and held, commencing the 5th day of May, 1902, judgment by default was rendered upon the complaint so filed as aforesaid, and on the return of service made as hereinbefore set forth and described against the said Mutual Reserve Fund Life Association, and in favor of the said Enoch Wadsworth for the sum of two thousand nine hundred sixty-seven $23/100$ (\$2967.23) dollars, with interest thereon from the 5th day of May, 1902, together with eighteen and $95/100$ (\$18.95) dollars costs.

Seventy-third. Thereafter said judgment was duly assigned by mesne assignments to the plaintiff Wilson R. Hunter.

Seventy-fourth. By the law of the State of North Carolina as the same existed at all the times mentioned herein, interest upon a judgment runs at the rate of six per centum per annum.

Seventy-fifth. No part of the said alleged judgments or any of them has been paid by the Mutual Reserve Fund Life Association or by the Mutual Reserve Life Insurance Company or any one on behalf of either said Association or said Company to the plaintiff, Wilson R. Hunter, or to any other person.

Seventy-sixth. An actual controversy exists at the time of this submission between the said parties upon the point hereby presented for decision.

Seventy-seventh. This statement of the facts upon which the said controversy hereby submitted depends shall be filed in the office of the Clerk of the County of Westchester.

Seventy-eighth. On the foregoing facts the plaintiff demands personal judgment against the defendant for the sum of one thousand and twenty-one and $51/100$ (\$1,021.51) dollars, with interest thereon from May 5, 1902; and for the sum of two thousand three hundred and ninety-two and $38/100$ (\$2,392.38) dollars,
48 with interest thereon from May 5, 1902; and for the sum of two thousand three hundred and ninety-two and $38/100$ (\$2,392.38) dollars, with interest thereon from May 5, 1902; and for the sum of two thousand nine hundred and eighty-six and $18/100$ (\$2,986.18) dollars, with interest from May 5, 1902; and for the sum of one thousand one hundred and seventy-two and $92/100$ (\$1,172.92) dollars, with interest thereon from May 5, 1902,

making in all the sum of nine thousand nine hundred and sixty-five and 37/100 (\$9,965.37) dollars, with interest as aforesaid, or any part thereof, together with costs.

The plaintiff claims that the Superior Court of North Carolina had jurisdiction of the person of the defendant to render the said judgments and each of them. And that full faith and credit be given to the said judgments of the Superior Court of North Carolina and each of them. And the plaintiff claims the benefit and protection of Section 1, of Article IV, of the Constitution of the United States.

The defendant claims that the Superior Court of North Carolina had no jurisdiction of the person of the defendant to render the said judgments or any of them. And that said judgments and each of them were not rendered upon due process of law. And the defendant claims the benefit and protection of the Fifth and Fourteenth Amendments to the Constitution of the United States.

The defendant demands judgment that the plaintiff's claims, and each of them, herein should be dismissed, with costs.

Dated, New York, February 6th, 1904.

WILSON R. HUNTER.

MUTUAL RESERVE LIFE INSURANCE CO.,

By CHARLES W. CAMP, *Secretary*.

[CORPORATE SEAL.]

PAUL ARMITAGE, *Plaintiff's Attorney*.

GEO. BURNHAM, JR., *Defendant's Attorney*.

49 STATE OF NEW YORK,
County of New York, ss:

On this 6th day of February, 1904, before me personally came Wilson R. Hunter, to me known and known to me to be the plaintiff in the foregoing statement of facts and submission, and the person who executed the same, and duly acknowledged to me that he executed the same.

JOHN T. DOOLING,
Commissioner of Deeds, N. Y. City.

STATE OF NEW YORK,
County of New York, ss:

On this 19th day of February, 1904, before me personally came Charles W. Camp, the Secretary of the Mutual Reserve Life Insurance Company, with whom I am personally acquainted, who being duly sworn did depose and say, that he resided in the City of New York; that he is an officer, to wit, the Secretary of the Mutual Reserve Life Insurance Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed thereto by the order of the Board of Directors of said Company; and that he signed his name to the foregoing statement of facts and submission by the like order.

FRANK C. McCARRICK,
Notary Public, N. Y. Co.

50 STATE OF NEW YORK,
 County of New York, ss:

Wilson R. Hunter being duly sworn, says: I am the plaintiff named in the foregoing statement of facts and submission. The controversy mentioned in the foregoing statement of facts and submission is real, and the submission is made in good faith for determining the rights of the parties.

WILSON R. HUNTER.

Sworn to before me this 6th day of February, 1904.

JOHN T. DOOLING,

Commissioner of Deeds, N. Y. City.

STATE OF NEW YORK,
 County of New York, ss:

Charles W. Camp, being duly sworn, says: I am an officer, to wit, the Secretary, of the Mutual Reserve Life Insurance Company, the defendant named in the foregoing statement of facts and submission. The controversy mentioned in said statement of facts and submission is real, and the submission is made in good faith for determining the rights of the parties.

CHARLES W. CAMP.

Sworn to before me this 19th day of February, 1904.

FRANK C. McCARRICK,

Notary Public, N. Y. Co.

51 New York Supreme Court, Westchester County.

WILSON R. HUNTER, Plaintiff,
 against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

It is hereby stipulated and agreed that the foregoing are correct copies of the agreed statements of facts and submission of controversy, and of the affidavits and certificates thereto attached, in the above entitled matter, filed in the office of the Clerk of the County of Westchester on the 17th day of March, 1904, and of the whole thereof, and the certificate of the Clerk of the County of Westchester with respect thereto is hereby waived.

Dated, March 17, 1904.

PAUL ARMITAGE,
 Plaintiff's Attorney.
GEO. BURNHAM, JR.,
 Defendant's Attorney.

3621.

STATE OF NEW YORK,
 Office of the County Clerk of Westchester County, ss:

I have compared the preceding with the original agreed statement of facts and submission of controversy filed in this office on the 4th

day of Oct., 1904, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 18th day of Oct., 1904.

[Seal Westchester County.]

LESLIE SUTHERLAND,
County Clerk of Westchester County.

52

Supreme Court, Westchester County.

WILSON R. HUNTER, Plaintiff.
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Judgment.

This case having been brought in this court under a statement of facts agreed upon and submitted under section 1279 of the Code of Civil Procedure to the Appellate Division of this court, in the Second Department, by the plaintiff, Wilson R. Hunter and the defendant, Mutual Reserve Life Insurance Company; and the plaintiff having been heard in support of his claim for judgment in his favor upon the facts so agreed upon, and the defendant having been heard in opposition thereto, and due deliberation having been had thereon; and an order having been made by said Appellate Division, dated 29th September 1904, and duly entered, directing that the plaintiff have judgment against the defendant under the stipulation for the sum of Nine thousand nine hundred and sixty-five dollars (\$9965.), with interest thereon from the 5th day of May 1902, together with the costs; and a certified copy of said order having been duly filed in the office of the clerk of the County of Westchester, and the costs and disbursements of the plaintiff having been duly taxed at the sum of Eighty-seven and 17/100 dollars (\$87.17).

Now on motion of Paul Armitage, attorney for the plaintiff it is

Ordered and adjudged, that said plaintiff, Wilson R. Hunter, do recover of the defendant, Mutual Reserve Life Insurance

53 Company, the sum of Nine thousand nine hundred and sixty-five dollars (\$9965), together with interest thereon from the 5th day of May, 1902, amounting to One thousand four hundred and forty-four and 93/100 dollars (\$1444.93) and eighty-seven and 17/100 dollars (\$87.17) costs and disbursements amounting in the whole to Eleven thousand four hundred and ninety-seven and 10/100 dollars (\$11,497.10), and that the plaintiff have execution therefor.

Dated, New York, October 4th, 1904.

LESLIE SUTHERLAND, *Clerk.*

3619.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County, ss:

I have compared the preceding with the original judgment filed in this office on the 4th day of Oct., 1904, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 18th day of Oct., 1904.

[Seal Westchester County.]

LESLIE SUTHERLAND,

County Clerk of Westchester County.

54 At a Term of the Appellate Division of the Supreme Court,
Held in and for the Second Judicial Department at the
Borough of Brooklyn, on the 29th day of September, 1904.

Present: Hon. Michael H. Hirschberg, Presiding Justice.

" " Willard Bartlett,

" " John Woodward,

" " Almet F. Jenks,

" " Warren B. Hooker, Justices.

No. 1.

WILSON R. HUNTER, Plaintiff,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Order on Submission of Agreed Case.

The above named plaintiff, Wilson R. Hunter, and the above-named defendant Mutual Reserve Life Insurance Company, having submitted a controversy for determination by this court, under the provisions of Section 1279 of the Code of Civil Procedure, upon a case containing an agreed statement of facts; and the cause having been argued by Mr. Paul Armitage, of counsel for the plaintiff, and by Mr. Frank R. Lawrence, of counsel for the defendant, and due deliberation having been had thereon, it is hereby

Ordered and adjudged, that the plaintiff have judgment in accordance with the terms of the submission with costs.

Enter.

M. H. HIRSCHBERG, P. J.

55 Supreme Court, Appellate Division, Second Judicial Department.

CLERK'S OFFICE,

Borough of Brooklyn, N. Y.:

I John B. Byrne Clerk of the Appellate Division of the Supreme Court in the Second Judicial Department do hereby certify that the

foregoing is a copy of the order made by said court upon the — in the above entitled action submitted to this court under section 1279 of the Code of Civil Procedure and entered in my office on the 29th day of September 1904 and that the original case upon which said appeal was heard are hereto annexed.

In witness whereof I have hereunto set my hand and affixed the seal of said court at the Borough of Brooklyn this 29th day of September 1904.

[SEAL.]

JOHN B. BYRNE, *Clerk.*

3620.

STATE OF NEW YORK.

Office of the County Clerk of Westchester County, ss:

I have compared the preceding with the original certified copy of order filed in this office on the 4th day of Oct. 1904, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 18th day of Oct., 1904.

[Seal Westchester County.]

LESLIE SUTHERLAND,
County Clerk of Westchester County.

56 [Endorsed:] Supreme Court—Appellate Division, Second Judicial Department. Wilson R. Hunter vs. Mutual Reserve Life Insurance Company. Certified copy of the Judgment Roll. (Action No. 1).

57 New York Supreme Court, Westchester County.

WILSON R. HUNTER, Plaintiff,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

SIRS: Please take notice that the defendant, the Mutual Reserve Life Insurance Company, in the above entitled action, hereby appeals to the Court of Appeals from the order of the Appellate Division of the Supreme Court of the State of New York in the Second Department, dated the 29th day of September, 1904, and duly entered and filed in the office of the Clerk of the County of Westchester, directing that the plaintiff have judgment against the defendant in the said action for the sum of Ninety-nine hundred and sixty-five dollars (\$9965.), with interest from the 5th day of May, 1902, and costs, and also from the judgment upon said order, dated on the 4th day of October, 1904, and entered on that day, giving judgment in favor of the plaintiff against the defendant in said action for the aggregate sum of eleven thousand four hundred and ninety-seven dollars and ten cents (\$11,497.10), and that the defendant

5—212

appeals from each and every part of said order and judgment respectively.

Dated, New York, October 5th, 1904.

Yours, &c.,

GEO. BURNHAM, JR.,

Attorney for Defendant,

309 Broadway, Manhattan Borough, New York City.

To Leslie Sutherland, Esq., Clerk of the County of Westchester.

To Paul Armitage, Esq., Attorney for Plaintiff, 280 Broadway, Manhattan Borough, New York City.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original notice of appeal filed in this office on the 10th day of October, 1904, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

59 [Endorsed:] N. Y. Supreme Court. Westchester County.

Wilson R. Hunter, Plaintiff, against Mutual Reserve Life Insurance Company, Defendant. (Copy.) Notice of appeal. Geo. Burnham, Jr., Attorney for defendant, Mutual Reserve Building, 309 Broadway, New York. To Paul Armitage, Esq., Attorney for plaintiff, 280 Broadway, New York City.

60 Supreme Court, Appellate Division, Second Judicial Department.

WILSON R. HUNTER, Plaintiff,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Submission of Controversy, upon an Agreed Statement of Facts,
Pursuant to Section 1279 of the Code of Civil Procedure.

Paul Armitage, for the plaintiff.

Frank E. Lawrence (George Burnham, Jr., and Gordon T. Hughes with him on the brief), for the defendant.

HOOVER, J.:

In this submission of controversy upon agreed statement of facts, it appears that the plaintiff is the assignee and owner of five judgments recovered against the defendant in the State of North Carolina, by citizens in that State, in the month of May, 1902. The defendant is a life insurance corporation organized and existing

under the laws of the State of New York. For many years prior to the 18th day of May, 1899, it did a regular insurance business, soliciting insurance, paying claims, and receiving premiums in the State of North Carolina. Chapter 54 of the laws of 1899 of the laws of North Carolina, in effect March 6th, 1899, provided, *inter alia*, that no foreign insurance corporation should do business in

that State "until it shall, by duly executed instrument filed
61 in his office, constitute and appoint the insurance commissioner or his successor, its true and lawful attorney upon whom all lawful process in any action or legal proceeding against it may be served, and therein shall agree that any lawful process against it which may be served upon its said attorney, shall be of the same force and validity as if served upon the company, and the authority thereof shall continue in force irrevocable so long as any liability of the company shall remain outstanding in this commonwealth." On or about the 13th day of April, 1899, the defendant, pursuant to this statute, by a duly executed instrument in writing, filed in his office, constituted and appointed the Insurance Commissioner or his successor its true and lawful attorney "upon whom all lawful process in any action or legal proceeding against it may be served, subject to and in accordance with all the provisions of the laws of the State of North Carolina now in force and such other laws as may hereafter be executed in relation thereto; and said company does hereby expressly agree that any lawful process against it which may be served upon said James R. Young, Insurance Commissioner, or his successor, shall be of the same force and validity as if served on this company and this authority shall continue in force and irrevocable so long as any liability of said company remains outstanding in said state." On the 17th day of May, 1899, the defendant attempted to withdraw the designation and appointment of the Insurance Commissioner theretofore made, and to revoke his authority, and the next day withdrew its agents from the State, closed its offices there, and wrote no more new policies. The actions which resulted in the judgments in the State of North Carolina, assigned to this plaintiff, were commenced by the service of lawful process upon James R. Young, the Insurance Commissioner of the State of North Carolina, after the attempted

62 revocation; and at the time of the service of these processes the defendant had outstanding liabilities in the State of North Carolina on policies it had issued to the citizens of that state. Although it withdrew its agents therefrom, it thereafter continued to collect and receive premiums through the mail, and pay losses in the same way. In addition to this class of business, the record states four particular instances of other business; in one an agent was sent into the state to adjust particular losses; in another it designated a bank within the state to collect premiums upon certain policies, and pay death losses thereon; again it employed an attorney within that state and authorized him to compromise a disputed claim, and fourth a new policy to an old policy holder was issued on the surrender of his first policy. These acts were all of them performed subsequent to the attempted revocation of the

power of attorney. As to the validity of one of the judgments for \$1172.92, the defendant while contending that the courts of North Carolina had no jurisdiction to render any personal judgment against it, makes no attempt to distinguish the facts surrounding the rendition of that judgment from the principles declared by the Court of Appeals in *Woodward v. Mutual Reserve Life Ins. Co.* (176 N. Y. 485), and in any event judgment must be awarded to the plaintiff, the assignee of that judgment, for that amount on the authority of the Woodward case.

As to the remainder of the plaintiff's claim, however the defendant asserts that inasmuch as the suits in North Carolina arose upon four separate contracts of insurance, made by the defendant, one with Davis, a citizen of the State of New Jersey, two with Meinhard, and one with Armitage, citizens of the State of New York, and did not arise out of the facts or circumstances connected with policies solicited by the defendant and written in the State of North Carolina, the judgments of the courts of that state awarding damages, were without jurisdiction and void, and should not support this action. The principal questions presented by this record in reference to the construction of the foregoing enactment of the legislation of the State of North Carolina, and other similar statutes, and by the acts performed thereunder and in respect thereof by the defendant and the rendition of judgments after personal service upon Commissioner Young, have so recently been discussed at length in the Woodward Case, and in *Birch v. Mutual Reserve Life Ins. Co.* (91 App. Div., 384) in this department, that it is unnecessary to discuss those questions here. In the Birch case the policies which gave rise to the action were all executed presumably in reliance upon the provisions of the law of North Carolina requiring the maintenance of an attorney or agent in that state, upon whom service might be made, and it was held that the courts of that state acquired jurisdiction of this defendant by service of process upon the Insurance Commissioner after the attempted revocation. Here, however, the contracts of insurance were made without that state and, although the assignee of the cause of action resided there at the time he brought his actions by service of process upon the Insurance Commissioner, the defendant urges that such service was void and that the attempted revocation of the appointment or designation of him as agent or attorney upon whom process might be served, was sufficient to revoke his authority in that particular, at least in relation to actions brought against it, growing out of policies actually written or contracts actually made in some other state other than that of North Carolina. I cannot give my accord to that view. The Court of Appeals pointed out in the Woodward case that a state might properly describe in terms whatsoever as a condition precedent of the transaction of business by a foreign corporation knocking at its doors for admission. In the case at hand the defendant was not permitted to enter and transact business until it consented to and did designate the Commissioner of Insurance its agent upon whom process might be served, and the designation following the requirements of the statutes

provided that Young or his successor was constituted the true and lawful attorney of the defendant *upon whom all lawful process in any action or legal proceeding against it may be served*, and the defendant expressly further agreed that *any* lawful process against it which might be served upon the commissioner should have the same force and validity as if served upon the Company, and that this authority should continue in force and irrevocable *so long as any liability* of said company remained outstanding in said State. This does not limit the character of liability even to matters arising out of the transaction of insurance business. It does not seek to limit the designation to exclude service of process in actions of negligence, on contracts other than arising out of the insurance business, or real estate transactions. Assuming that the defendant had negligently inflicted injuries upon some citizen of the State of North Carolina in and about the business of maintaining the offices which it operated in that state prior to the 18th day of May, 1899, or, assuming that it had failed to pay an agent in that state his salary, or assuming that at the time of its withdrawal it was liable for the rent of the premises it had occupied for an agency; under the view the defendant wishes us to take, neither the individual who sustained the personal injuries, nor the agent, nor the landlord,

65 might have obtained jurisdiction of the defendant in an action in that state to obtain redress by service of process upon the insurance company made within, say, a week after the cause of action arose, and within that length of time, after the attempted revocation of the designation of the commissioner as attorney. There is nothing in the statute and nothing in the designation pointing to an indication that the designation was limited to any particular class of actions, and without such limitation I am of the opinion that so long as any liability of the defendant remained outstanding in the State of North Carolina, valid service of process against it might be made upon the Insurance Commissioner.

Then again if the construction asked by the defendant should prevail, a citizen and resident of North Carolina would be without power to reach the defendant through the commissioner, where prior to the revocation he had purchased a policy in the State of Virginia, and later removed to the State of North Carolina; so, too, a resident of the latter state would be without a like remedy were he the beneficiary in a policy actually issued and written in the State of Kentucky. There is no limitation in the statute sufficient to exclude such cases from its benefit, nor to exclude the one in hand.

Judgment should therefore be directed for the plaintiff under the stipulation for the sum of nine thousand and nine hundred and sixty-five dollars, with interest thereon from the 5th day of May, 1902, together with costs.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original opinion filed in this office on the 17 day of May, 1906, and do hereby certify the

same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,
County Clerk of Westchester County.

66 Compared.

New York Supreme Court, Westchester County.

WILSON R. HUNTER, Respondent,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Appellant.

Stipulation in Lieu of Clerk's Certificate.

It is hereby stipulated and agreed, that the foregoing are correct copies of the return of the Appellate Division, judgment entered in the Supreme Court thereon, notice of appeal on file in the office of the Clerk of the County of Westchester, and the opinion of the Appellate Division and certification of all the said copies and each of them is hereby expressly waived.

Dated New York, October 22nd, 1904.

GEO. BURNHAM,
Appellant's Attorney.
PAUL ARMITAGE,
Respondent's Attorney.

[In pencil:] Printed Record ends here.

STATE OF NEW YORK,
Office of the County Clerk of Westchester County:

I have compared the preceding with the original Stipulation filed in this office on the 17 day of May, 1906, and do hereby certify the same to be a correct transcript therefrom and the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

County Clerk of Westchester County.

67

Court of Appeals.

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, Held at the Capitol, in the City of Albany, on the 27th Day of February, in the Year of our Lord One Thousand Nine Hundred and Six, Before the Judges of said Court.

Witness The Hon. Edgar M. Cullen, Chief Judge, Presiding.
W. H. SHANKLAND, *Clerk*.

Remittitur, February 28th, 1906.

WILSON R. HUNTER, Resp'd't,
ag't
MUTUAL RESERVE LIFE INSURANCE Co., App'l't.

Be it remembered; That on the 24th day of October, in the year of our Lord one thousand nine hundred and four the Mutual Reserve Life Insurance Company, the appellant in this action, came here into the Court of Appeals, by George Burnham, Jr., its attorney, and filed in the said Court a notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department and from the judgment entered thereon. And Wilson R. Hunter, the respondent in said action, afterwards appeared in said Court of Appeals by Paul
68 Armitage, his attorney. Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Frank R. Lawrence, of counsel for the appellant, and by Mr. Paul Armitage, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment entered upon the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is modified by reducing the same by the amount of \$8792.42, with interest from May 5th, 1902, and as modified affirmed, without costs to either party.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be modified, &c., &c., and as modified affirmed, without costs to either party as aforesaid. And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which

record now remains in the said Supreme Court before the Justices thereof, &c.

W. H. SHANKLAND,

Clerk of the Court of Appeals of the State of New York.

69

Court of Appeals, Clerk's Office.

ALBANY, February 28th, 1906.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the Court of Appeals, with the papers originally filed therein attached thereto.

[Seal of Court of Appeals.]

W. H. SHANKLAND, *Clerk.*

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Remittitur filed in this office on the 17 day of May, 1906, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

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At a Special Term of the Supreme Court, Kings County, held at the County Court House, in said County, on the 28 day of June, 1906.

Present: Hon William D. Dickey, Justice.

WILSON R. HUNTER, Plaintiff,

vs.

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

This cause having been brought on upon the remittitur herein sent down from the Court of Appeals and now filed in this court, by which remittitur it appears that an appeal was taken by the defendant from the judgment entered in the above entitled action, bearing date October 4th, 1904, and entered on said day, which said Judgment adjudged that the plaintiff do recover from the defendant herein the sum of Nine Thousand nine hundred and sixty five (\$9965) Dollars, together with interest from May 5th, 1902, amounting to One thousand four hundred and forty-four and 93/100 (\$1444.93) Dollars and Eighty-seven and 17/100 (\$87.17) Dollars costs and disbursements, amounting in the whole to Eleven Thousand Four Hundred and Ninety-seven and 10/100 (\$11497.10), which said judgment was entered pursuant to an order of the Appel-

late Division of the State of New York, held in and for the second Judicial Department on the 29th day of September, 1904;

71 and it further appearing from said remittitur that the said Court of Appeals has ordered and adjudged that the said judgment of the Appellate Division appealed from be modified by reducing the same by the sum of Eight thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, together with interest thereon from the 5th day of May, 1902, and that the said judgment rendered upon the said order of the Appellate Division, as modified, be affirmed without costs to either party; and that the record and proceedings have been directed by the said Court of Appeals to be remitted to this Court, and this Court directed to enforce the said judgment of the Court of Appeals according to law.

Now therefore on motion of Paul Armitage, attorney for the plaintiff, it is

Ordered and adjudged that the judgment of said Court of Appeals be, and the same hereby is, made the judgment of this Court, and that the judgment in the above entitled action heretofore entered herein on the 4th day of October, 1904, be modified by reducing the same by the sum of Eight thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest thereon from the 5th day of May, 1902, to the date of the said judgment; to wit, October 4th, 1904, which interest amounts to the sum of One thousand Two Hundred and Seventy-four and 90/100 (\$1274.90) Dollars, making a total of Ten Thousand and sixty seven and 32/100 (\$10067.32) Dollars, and that said judgment heretofore entered herein on the 4th day of October, 1904, as so modified and reduced by the sum of Ten Thousand and sixty-seven and 32/100 (\$10067.32) Dollars, be affirmed without costs to either party.

Enter in Westchester County.

WILLIAM D. DICKEY, J. S. C.

72 The foregoing order is consented to as to form.

Attorney for Plaintiff.
 GEO. BURNHAM, JR.,
Attorney for Defendant.

Notice of settlement is hereby waived.

PAUL ARMITAGE,
Attorney for Plaintiff.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original order filed in this office on the 2nd day of July, 1906, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,
County Clerk of Westchester County.

73 SIR: Please take notice that the within is a copy of an order this day duly entered in the within-entitled action and filed in the Office of the Clerk of the within-named Court.

Dated New York, July 2, 1906.

GEO. BURNHAM, JR.,
Attorney for Defendant.

To Paul Armitage, Esq., Attorney for plaintiff.

Copy received Jul- 7, 1906.

PAUL ARMITAGE,
Attorney for —.

[Endorsed:] Supreme Court, Westchester County. Wilson R. Hunter, Plaintiff, against Mutual Reserve Life Insurance Company, Defendant. Action No. 1. Order on Remittitur as Resettled with Notice of Entry. Geo. Burnham, Jr., Attorney for Defendant, Mutual Reserve Building, 309 Broadway, New York. To Paul Armitage, Esq., Attorney for plaintiff, 280 Broadway, N. Y.

74 Supreme Court of the State of New York, Westchester County.

WILSON R. HUNTER, Plaintiff,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Judgment.

A judgment in the above entitled action in favor of the plaintiff having been rendered in this Court on the 4th day of October, 1904, upon an Agreed Statement of Facts, and Submission of Controversy, which said judgment adjudged that the plaintiff do recover from the defendant herein the sum of Nine Thousand Nine Hundred and Sixty-five (\$9965). Dollars, together with interest from May 5th, 1902, amounting to One Thousand Four Hundred and Forty-four and 93/100 (\$1444.93) Dollars and Eighty-seven and 17/100 (\$87.17) Dollars costs and disbursements, amounting in the whole to Eleven Thousand Four Hundred and Ninety-seven and 10/100 (\$11497.10), which said judgment was entered pursuant to an order of the Appellate Division of the State of New York held in and for the Second Judicial Department on the 29th day of December, 1904; and the defendant having appealed to the Court of Appeals, and the said Court of Appeals, having sent its remittitur filed herein on the 28th day of February, 1906, by which it appears that said Court of Appeals has ordered and adjudged that said judgment so rendered

against the defendant herein on the 4th day of October, 1904, be modified by reducing the same by the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, together with interest thereon from May 5th, 1902, to the date of said judgment, i. e., October 4th, 1904, which interest amounts to the sum of One Thousand Two Hundred and Seventy-four and 90/100 (\$1274.90) Dollars; and having further adjudged that the said judgment so rendered, as modified aforesaid, be affirmed without costs to either party; and said Court of Appeals having remitted its judgment to this Court to be enforced according to law, and this Court having by an order entered herein on the — day of June, 1906, ordered that said judgment of said Court of Appeals be made the judgment of this Court, and directing judgment to be entered accordingly,

Now, on motion of Paul Armitage, Attorney for the plaintiff, it is Ordered and adjudged that the judgment in the above entitled action heretofore entered herein on the 4th day of October, 1904, be modified by reducing the same by the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest thereon from the 5th day of May, 1902, to the date of the said judgment, to wit, October 4th, 1904, which interest amounts to the sum of One Thousand Two Hundred and Seventy-four and 90/100 (\$1274.90) Dollars, making a total of Ten Thousand and Sixty-seven and 32/100 (\$10067.32) Dollars, and that said judgment heretofore entered herein on the 4th day of October, 1904, as so modified and reduced by the sum of Ten Thousand and Sixty-seven and 32/100 (\$10067.32) Dollars, be affirmed without costs to either party.

Dated, July 2, 1906.

LESLIE SUTHERLAND, *Clerk.*

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Order filed in this office on the 2nd day of July 1906, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

76 [Endorsed:] Supreme Court, Westchester County. Wilson R. Hunter, Plaintiff, against Mutual Reserve Life Insurance Company, Defendant. Action No. 1. Judgment with notice of entry. Geo. Burnham, Jr., Attorney for Defendant, Mutual Reserve Building, 309 Broadway, New York. To Paul Armitage, Esq., Attorney for Plaintiff, 280 Broadway, N. Y. Copy received Jul- 7, 1908. Paul Armitage, Attorney for — — —.

SIR: Please Take Notice that the within is a copy of a judgment this day duly entered in the within-entitled action and filed in the Office of the Clerk of the within-named Court.

Dated New York, July 2 1906.

GEO. BURNHAM, JR.,
Attorney for Defendant.

To Paul Armitage, Esq., Attorney for Plaintiff.

77

WILSON R. HUNTER, Respondent,
v.

MUTUAL RESERVE LIFE INSURANCE COMPANY, Appellant.

(Decided February 27th, 1906.)

This is an appeal from a judgment for \$11,497.10, damages and costs, entered in favor of the plaintiff upon an order and direction made by the Appellate Division of the Supreme Court of the second department, upon the submission of a controversy upon an agreed statement of facts.

Frank R. Lawrence, for appellant.
Paul Armitage, for respondent.

HISCOCK, J.:

The defendant is a life insurance company, organized under the laws of this state. The judgment appealed from awarded recovery upon and for the amount of five personal judgments recovered against it in the state of North Carolina. The validity of said latter judgments as a sufficient basis for the present recovery is dependent upon a purported service of process upon the insurance commissioner of North Carolina as a representative for that purpose of the defendant, the latter in no other manner having been served upon or having appeared in said actions. These original judgments allowed recovery on account of five contracts of insurance issued by defendant, in one case to a resident of North Carolina while it was doing business there, and in the remaining cases to residents, respectively, of New York and New Jersey, who, long after defendant had attempted to withdraw from business in North Carolina, as hereinafter stated, assigned their claims to residents of said state. It is conceded by appellant that the judgment appealed from should be affirmed so far as it allows recovery upon the judgment under the North Carolina policy. But it is claimed that as to the other purported judgments the courts of the latter state did not acquire jurisdiction by the attempted service of process, and that as to them the judgment before us should be reversed.

We think that the appellant's contention is well founded.

Some of the facts now presented to us and of the principles applicable thereto were fully considered by this court in *Woodward v. Mutual Reserve Life Ins. Co.* (178 N. Y. 485), and it will only be necessary now to so far state the facts presented as may be necessary to make plain the reason for distinguishing this case from that.

For several years before March 6, 1899, the defendant had been engaged in transacting its life insurance business in North Carolina under provision for service of process upon a local representative for that purpose. Upon the date mentioned the legislature of that state adopted a statute known as the Willard Law, which created an insurance department and provided that no foreign insurance company should be admitted and authorized to do business until it had complied with certain conditions. Among these was one to the effect that it should "by a duly executed instrument constitute and appoint the insurance commissioner, or his successor, its true and lawful attorney upon whom all lawful process in any action or legal proceedings against it might (may) be served, and therein should (shall) agree that any lawful process against it which may be served upon its said attorney should (shall) be of the same force and validity as if served on the company, and the authority thereof should (shall) continue in force irrevocable so long as any liability of the company remains outstanding in this commonwealth."

79 The defendant duly executed and filed an instrument in accordance with the provisions of said act and continued for a time to transact business.

Upon February 10, 1899, the same legislature had adopted a statute known as the Craig Act, which, in substance, provided that any foreign insurance company desiring to transact business in the state of North Carolina after June first then ensuing must become a domestic corporation of said state, and attaching penalties to any attempt to transact business in violation of said provisions.

May 17, 1899, defendant's board of directors adopted a formal resolution referring to the Craig Act and stating its determination not to comply therewith but instead to withdraw from the transaction of business in said state, and declaring that the appointment of the insurance commissioner as an attorney upon whom process might be served be "cancelled, revoked and annulled." Upon May 20th duly certified copies of this resolution were filed with and in the office of the insurance commissioner. Upon May 18, 1899, the defendant did withdraw all of its agents from the state of North Carolina, and since that date has had no agent therein, premiums upon policies theretofore issued by it to residents of said state being remitted to it by mail at its home office in New York city where the policies and premiums were payable, and losses upon policies issued by it being paid by checks from said office. Outside of this the defendant does not appear to have transacted any business whatever in the state since its withdrawal save in four specific instances,

80 two of them occurring a considerable period before and two a considerable period after the purported institution against it in the foreign state of the suits in question. Without going into the details of these transactions, it may be briefly stated that three of them involved the settlement of losses under or re-adjustment of policies issued to residents of North Carolina, while the defendant was regularly transacting business there, and in the fourth case a special adjuster appointed to settle a claim with a

supposed resident of Washington followed him for such purpose into the state of North Carolina whither he had removed.

More than two years after its above-mentioned withdrawal from, and revocation of power of attorney in, North Carolina, residents of New York and New Jersey made assignment of alleged claims under policies there issued to them to residents of North Carolina and upon them four of the original judgments in question were secured through a purported service of process under the power of attorney already stated.

Defendant, conceding its liability upon the judgment upon the North Carolina policy, we need spend no considerable time in reviewing and restating the decision of this court in the Woodward case, whereby it was in effect held that a stipulation made by a foreign insurance company as a condition of doing business in North Carolina that process might be served in its behalf upon some official as long as there might be any outstanding liability upon its part under any contract of insurance, is an agreement for the benefit of and enforceable by a holder of a policy issued to him in that state which could not be subsequently canceled or evaded by the insurance company so long as the liability in behalf of such policyholder continued. The only question which we need discuss is whether the principles of that case, or any others invoked by the present plaintiff, prevented defendant from so canceling and revoking its power of attorney to the superintendent of insurance under the circumstances disclosed as to bar service upon him as its representative in suits upon claims contracted with persons residing outside of the state of North Carolina, and in no way belonging or transferred to a resident of said state until after the attempted revocation.

The learned counsel for the plaintiff largely bases his contention that defendant did not escape service and jurisdiction in North Carolina upon two propositions. He urges, in the first place, that it did not, as it claimed to, discontinue transacting business there and that for that reason its attempted revocation and withdrawal from the state was ineffective. And, secondly, he insists that the strict letter of its power of attorney to the insurance commissioner for service of process provides that such authority "shall continue in force irrevocable so long as any liability of the company remains outstanding in said (this) commonwealth," and that at the time purported service was made there were existing liabilities outstanding.

It may be assumed at once that if defendant upon a fair construction of language and of its acts did continue generally to transact and carry on the business of insurance in North Carolina after its purported revocation of its power of attorney and withdrawal from such state, the latter should be held ineffectual to prevent a continuance of the authority of the insurance official to receive service of a summons. The authorization by the company of service upon said official was a condition of its transacting business in said state, and so long as such transaction of business continued the company should not be allowed to escape the consequences of its agreement by any deceptive or apparent withdrawal. We do not;

however, think that such was the true character of its acts. The Craig Act, to which reference has already been made, by its provision excluded defendant from the transaction of business unless it was willing to become a domestic corporation. It is urged that the Willard Act, to which we have also referred, was passed subsequently and was so inconsistent with the former act as to repeal its prohibitory and penalizing provisions. We scarcely agree with this argument. We think that there was room for the provisions of both statutes. The courts of the state where they were passed in effect have so held, which certainly should be a matter of considerable weight with us in this discussion. (*Debnan v. Telephone Co.*, 126 N. C. 831; *Layden v. Knights of Pythias*, 128 N. C. 546).

But whether this is so or not, the defendant apparently in good faith did regard the provisions of the Craig Act as driving it from the state, in the absence of its willingness to be incorporated as a domestic corporation, and its acts then and thereafter performed indicate an intention actually and in good faith to cease doing business there, and to our minds the facts agreed upon do not show any subsequent modification of this intention. It has already issued policies and contracted liabilities in the state which could not be ignored. It dealt with these liabilities so far as it could from its office in New York and the specific acts which are detailed in the submission arose in connection with the settlement and treatment of old liabilities and old business. We do not think that there was any such continuation of an ordinary, substantial and active insurance business as would be necessary to keep alive the power of attorney within plaintiff's contention upon this point. (*Knights Templars' Indemnity Co. v. Jarmen*, 187 U. S. 197, 204; *Frawley v. Penn. Casualty Co.*, 124, Fed. Rep. 259; *Doe v. Springfield Boiler Co.*, 104 Fed. Rep. 684.)

We, therefore, pass to the consideration of plaintiff's second contention based upon the wording of the power of attorney. In so doing and in construing this instrument and determining whether defendant might revoke it and escape from its consequences as to the majority of the judgments involved in this action, we should keep in mind the policy which led to the adoption of the statute under which it was executed. This policy, briefly stated, involved and voiced the determination upon the part of the state that it would not allow a foreign insurance company to exercise the privilege of doing business within its limits without securing to its citizens who might there be dealt with, an arrangement by which they might institute actions and enforce their contracts and policies at home and without being driven into some foreign state where the company might have its origin and principal place of business.

Statutes requiring the execution of some such agreement by foreign corporations as is invoked against the defendant here, have always been regarded as designed for the protection of the citizens of the state enacting the legislation and who might acquire rights under contracts executed with them or for their benefit while they were such citizens. Such was the underlying principle and view which led to the decisions in the Woodward

case in *La Fayette Ins. Co. v. French* (18 Howard (U. S.) 404) in *Conn. Mut. Life Ins. Co. v. Spratley* (172 U. S. 602) and in *St. Clair v. Cox* (106 U. S. 350).

It would be quite beyond the spirit of those decisions to hold, and we cannot believe that it was the further policy of such legislation to create and perpetuate a local forum to which under guise of an assignment to some resident, non-residents of far distant states might flock for the purpose of instituting litigation upon contracts issued to them at their homes, against a corporation there readily subject to service and which long before had attempted in good faith to withdraw from the jurisdiction thus hunted out.

Holding this view, we are not willing to decide that defendant's power of attorney was irrevocable as against the four foreign claims upon which recovery was had in North Carolina. It is true that, as the statute required, said power of attorney upon its face was irrevocable so long as any liability of the company should remain outstanding in said state. * But it is well settled that a power of attorney, although by its literal terms irrevocable, may be revoked unless some interest or right founded or created upon the faith thereof required its perpetuation and continuance. (*Hunt v. Rousmanier's Adm.*, 8 Wheaton, 174; *Knapp v. Alvord*, 10 Paige, 205; *Story on Agency* (3rd ed.), sec. 476.)

85 The citizens of North Carolina who had taken contracts from the defendant while it was there doing business in reliance upon this power of attorney which had been executed for their protection under the requirements of the statute were entitled to have it remain unrevoked as provided by its terms. As we have already seen, they are to be regarded as having made their contracts upon the faith of it, and as against them defendant could not escape from its consequences.

But the plaintiffs in the North Carolina actions, who secured their claims from non-resident assignors, occupied no such position. These claims under contracts executed in other states cannot by any possibility be regarded as having been contracted or acquired in reliance upon this provision for service within the state of North Carolina. The assignees, who saw fit to embark upon the acquisition of foreign claims, did not do so in innocent reliance upon the right to bring such suits in their own state, for long before they began the accumulation of claims against the defendant it had formally, and, as we believe, in good faith, withdrawn from the state where they lived and given formal notice of its revocation of the power of attorney. They did not acquire any such right to enforce jurisdiction in the courts of their own state against the defendant as makes it in any way inequitable or unjust that the power of attorney should be revoked. They are not of the class for whose protection it was originally executed. They have not acquired any rights upon the faith of it. The contracts which they seek to enforce were not secured by
86 defendant from those who expected protection under it. We not only think that it is legal and equitable that defendant's revocation should be effective as against these parties, but that it would be extremely inequitable to hold the reverse.

The learned counsel for the plaintiff has called to our attention

many cases which he claims are opposed to the views expressed. While some of them may contain isolated expressions which seem to sustain his view, we think that all of them which ought to be at all controlling upon this court may be clearly distinguished from the case at bar, and we shall only refer briefly to a few of them.

In *Connecticut Mut. Life Ins. Co. v. Spratley* (172 U. S. 602) it appeared that plaintiff in error had been engaged for many years in transacting a general insurance business in Tennessee under a statute which, amongst other things, provided that any corporation that had any transaction with persons or concerning any property situated in the state through any agency whatever acting for it within the state should be held to be doing business within the meaning of the act, and also that process might be served upon any agent of the corporation found within the county where the suit was brought no matter what character of agent such person might be. There after, having issued many policies, the corporation assumed to withdraw from the state by recalling its agents and refusing to take new risks or issue new policies within the state. At this time many policies were outstanding upon which it continued to collect premiums through an agent residing in another state. Action was brought in the courts of Tennessee upon policies issued for the benefit of resi-

87 dents of that state while the company was regularly engaged in doing business there and before its attempt to withdraw, and service in said action was made upon a conceded representative of the company who had come into the state for the purpose of adjusting and settling losses under said policies. It was held that under the circumstances of that case the company was doing business within the state and that service was properly made upon it in the manner indicated. It will be at once observed that independent of the statutory provision defining what should be held to constitute doing business within the meaning of the act under which plaintiff in error operated in the state of Tennessee, this decision was entirely in line with the principle adjudicated by this court in the *Woodward* case. The rights involved were those of a policyholder resident in the state who had there contracted with the company while it was transacting business in that state under a statute which coupled with permission certain conditions for the service of process, and the principle upheld was that the company could not defeat the rights of the policyholder and by an attempted withdrawal from the state force him into some foreign jurisdiction.

Mutual Reserve Fund Life Association v. Phelps (190 U. S. 147) was based upon the same principle of upholding in favor of a citizen of Kentucky who had received from the plaintiff in error a policy of insurance while it was regularly transacting business in that state, the right to institute action by service of process upon the insurance commissioner in accordance with the provisions of a statute which permitted the company to transact business in that state under conditions allowing such service of process, notwithstanding the
88 company after issuing the policy had attempted to withdraw from the state and cancel the right of service upon the commissioner.

In *Birch v. Mutual Reserve Life Ins. Co.* (91 App. Div. 384,

affirmed without opinion, 181 N. Y. 583) judgment was recovered in the state of North Carolina upon various contracts of life insurance executed in that state while the defendant was regularly engaged in transacting its life insurance business there. Action was commenced by service of process upon the insurance commissioner, and it was held that such service was good, although the defendant had attempted to withdraw from the state and revoke its power of attorney before service was made.

We see nothing in any of these cases which impairs the force of the conclusions reached by us.

The judgment appealed from should be modified by reducing the same by the amount of \$8,792.42, with interest thereon from May 5th, 1902, and as so modified should be affirmed, without costs to either party.

Cullen, Ch. J., O'Brien, Haight, Vann and Werner, JJ., concur; Willard Bartlett, J., not sitting.

Judgment accordingly.

89 [Endorsed:] Hunter vs. M. R. Co. Opinion of the Court of Appeals.

90 Court of Appeals of the State of New York.

WILSON R. HUNTER, Plaintiff,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

To the Hon. Edgar M. Cullen, Chief Justice of the Court of Appeals of the State of New York:

The petition of Wilson R. Hunter, respectfully shows:

That heretofore, and upon the 17th day of March, 1904, as permitted and required by the terms and provisions of Sections 1279 and 1280 of the Code of Civil Procedure of the State of New York, there were duly filed in the office of the Clerk of the County of New York, in said State, the Agreed Statement of Facts and Submission of Controversy herein dated February 6th, 1904.

That, as will more fully appear by reference to said agreed statement of facts and submission of controversy, that the defendant, the Mutual Reserve Fund Life Association, was at all times prior to April 17th, 1902, a corporation organized for transacting the business of life insurance upon the co-operative or assessment plan, under the laws of the State of New York originally incorporated on February 9th, 1881, and in April 17th, 1902, it amended its Charter under the laws of the State of New York, and re-incorporated as a mutual life insurance company under the name of the Mutual Reserve Life Insurance Company. That the plaintiff sued to recover from the

91 defendant, above named, a personal money judgment for the sum of Nine Thousand nine hundred and sixty-five and 37/100 (\$9965.37), with interest from May 5th, 1902, being the amount of five certain judgments which had been received in

May, 1902, in the Superior Court for the County of Craven, in the State of North Carolina, against the defendant, formerly denominated the Mutual Reserve Fund Life Association, as follows:

1st. One judgment in favor of Rufus W. Hicks, a citizen and resident of North Carolina, for One Thousand one hundred and fifty-three and 97/100 (\$1153.97) Dollars, with interest thereon from May 5th, 1902, together with Eighteen and 95/100 (\$18.95) Dollars, costs.

2nd. Four separate judgments each in favor of Enoch Wadsworth, a citizen and resident of North Carolina, amounting in all, with costs, to the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest thereon from May 5th, 1902.

That all of said five judgments so recovered in the Superior Court of North Carolina, were before this action duly assigned to and became the property of the plaintiff, Wilson R. Hunter.

That said five judgments were recovered in the following manner:

Upon January 20, 1902, five summonses were issued out of said Superior Court for the County of Craven, in the State of North Carolina, one, at the instance of said Rufus W. Hicks, and four at the instance of Enoch Wadsworth, commanding the Sheriff of Wake County, in said State of North Carolina, to summon the Mutual Reserve Fund Life Association to appear at a term of said Superior Court for the County of Craven to be held on the 10th day of February, 1902, and answer the complaints of said Hicks and Wadsworth deposited in the office of the Clerk of said Superior

92 Court, and that in said summonses notice was given that in case the defendant should fail to answer such complaints respectively, the plaintiffs therein named, i. e., said Hicks and said Wadsworth would apply to the said Superior Court for the relief demanded therein.

That on January 21, 1902, the said Sheriff of Wake County in the State of North Carolina, duly served the said five summonses on James R. Young, then insurance commissioner of the State of North Carolina, on behalf of the defendant, and on the same day, said James R. Young, as such Insurance Commissioner, duly mailed copies of said five summonses to the defendant in New York City, in the State of New York, which in due course of mail were received.

That the service of said process in said five actions in said Superior Court of North Carolina on the said James R. Young, Insurance Commissioner, on behalf of the defendant, was, pursuant to the provisions of a statute of the State of North Carolina adopted and in force March 6th, 1899, by the terms of which all insurance corporations organized under the laws of states other than North Carolina, prohibited from doing business in the State of North Carolina until, among other things, such company had by a duly executed instrument filed in the office of the Insurance Commissioner of said State appointed such Insurance Commissioner its true and lawful attorney, upon whom all lawful process in any action or proceedings against it may be served with the same force and validity as if served on the Company, the authority thereof to continue in force irrevoc-

cable so long as any liability of the Company remained outstanding in said commonwealth. And pursuant to the provisions of which statute the defendant Company, on the 13th day of April, 1899, filed in the office of such James R. Young, a power of attorney, authorizing him to receive process in all actions in said State, such authority to continue irrevocable, so long as it had outstanding liabilities in the State.

That it further appeared in said agreed statement of facts, that at the service of said five summons- as aforesaid, the defendant Company had many outstanding liabilities in the State of North Carolina, and had numerous insurance policies on the lives of citizens of that State in which it was, at that time, collecting premiums and assessments and adjusting losses thereon, as they accrued.

That no answer or appearance on behalf of defendant having been interposed in said five actions so commenced by Hicks and by Wadsworth in the said Superior Court, judgments by default were, on May 5th, 1902, at a Stated Term of said Superior Court, entered in said actions; (1) One judgment in favor of said Hicks for One thousand One hundred and fifty-three and 97/100 (\$1153.97) Dollars, with Eighteen and 95/100 (\$18.95) Dollars costs; and, (2), four judgments in favor of said Wadsworth amounting in all to Eight Thousand Seven hundred and ninety-two and 42/100 (\$8792.42) Dollars.

Thereafter the plaintiff here, Wilson R. Hunter, became the owner of said five judgments, and brought this present action in the Supreme Court of New York State to recover from the defendant the amount thereof.

That thereafter, at a term of the Appellate Division of the Supreme Court, in and for the Second Judicial Department, held on the 29th day of September, 1904, it was ordered and adjudged that the plaintiff have judgment against the defendant for the full amount of said five (5) judgments with interest and costs, which order was duly entered in the office of the Clerk of said Appellate Division.

That thereafter, and on October 4th, 1904, pursuant to said order, there was entered in the Clerk's Office of the County of Westchester, in the State of New York, a judgment of the Supreme Court in favor of the plaintiff, and against the defendant for the sum of Nine thousand nine hundred and sixty-five (\$9965.) Dollars, being the amount of said five judgments so sued upon, together with interest from May 5th, 1902, amounting to One thousand four hundred and forty-four and 93/100 (\$1444.93) Dollars, and costs and disbursements Eighty-seven and 17/100 (\$87.17) Dollars, amounting in all to Eleven Thousand Four hundred and ninety-seven and 10/100 (\$11497.10) Dollars.

That thereafter and upon October 5th, 1904, the defendant duly served on the plaintiff and the Clerk of said County of Westchester his notice of appeal to the Court of Appeals of the State of New York from said order of the Appellate Division and said judgment entered upon said order, and duly perfected his said appeal to the said Court of Appeals.

That, thereafter, and upon February 28th, 1906, the Court of Appeals, by its decision and judgment herein, modified the said judgment of said the Appellate Division of the Supreme Court, by reducing the same by the amount of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest from May 5th, 1902, and directed, as modified, said judgment be affirmed without costs to either party.

That upon February 28th, 1906, the said Court of Appeals sent to the Supreme Court of New York its remittitur remitting the judgment of said Court of Appeals to said Supreme Court to be enforced according to law.

That upon June 28th, 1906, said Supreme Court of New York ordered that the judgment of said Court of Appeals be made the judgment of said Supreme Court, and directed judgment to
95 be entered accordingly.

That upon July 2nd, 1906, final judgment was entered by the said Supreme Court reducing the said judgment heretofore recovered herein by the plaintiff against the defendant on October 4th, 1904, by the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest from May 5th, 1902, to the date of said judgment, amounting to the sum of One thousand two hundred and seventy-four and 90/100 (\$1274.90) Dollars, a total of Ten thousand sixty-seven and 32/100 (\$10037.32) Dollars, and adjudging that said judgment, as so modified, be affirmed.

That the said sum of Eight Thousand Seven hundred and ninety-two and 42/100 (\$8792.42) Dollars, with interest from May 5th, 1902, by which the Court of Appeals so reduced plaintiff's judgment recovered against defendant on October 4th, 1904, was the amount of the four judgments recovered by said Wadsworth against the defendant in the Superior Court of North Carolina; that the ground on which said Court of Appeals reduced the said judgment recovered by this plaintiff by that amount, was that the said causes of action so sued upon by said Wadsworth were based on contracts and policies of insurance made with citizens of States other than that of North Carolina; that the aforesaid power of attorney to said Insurance Commissioner of North Carolina was revocable as to such policies, and had been revoked by the defendant before such service, hence the said Superior Court of North Carolina had no jurisdiction to render such judgments.

That upon the hearing and arguments of said submitted controversy before said Appellate Division, and before said Court of Appeals, your petitioner specially set up and claimed that all of said judgments and particularly said four judgments of the
96 Superior Court of North Carolina in *in* favor of Wadsworth were valid and binding on defendant and entitled to full faith and credit in the Courts of New York State as judicial proceedings of the State of North Carolina, and specially set up and invoked the protection and benefit of Section I of Article IV of the Constitution of the United States, and his rights and privileges thereunder.

That the judgment of said Court of Appeals of the State of New York reducing the petitioner's judgment heretofore entered herein on the 4th day of October, 1904, by the amount of said four (4) judgments so recovered in the Superior Court of North Carolina in favor of said Enoch Wadsworth for the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest from May 5th, 1902, and the final judgment of said Supreme Court, entered in accordance therewith were against the said rights, privileges and immunities of the petitioner under Section I of Article IV of the Constitution of the United States, it being adjudged by said Court of Appeals and by said Supreme Court that the said four (4) judgments so recovered by said Enoch Wadsworth in said Superior Court of North Carolina were not valid judgments and said court of Appeals and said Supreme Court have refused to give full faith and credit due under the constitution of the United States to said four (4) judgments of the Superior Court of North Carolina.

That a decision against said rights, privileges and immunities of the petitioner under said Section I of Article IV of the Constitution of the United States was necessary to the said judgments rendered in said Court of Appeals and said Supreme Court of the State of New York.

That by the said judgment of the Court and said final judgment of the Supreme Court of the State of New York, entered in accordance therewith, certain errors were committed to the
97 injury and prejudice of the petitioner, all of which will more in detail appear from the assignment of errors presented with this petition.

That the Court of Appeals of the State of New York is the highest Court of said State in which a decision could be had in this suit.

Wherefore your petitioner prays that a writ of error from the Supreme Court of the United States to the Supreme Court of the State of New York, and the justices thereof, be allowed for the examination and correction of errors so complained of; that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States; that a citation be granted and signed; that the bond herewith presented be approved; that the errors complained of may be reviewed by the Supreme Court of the United States, and that the judgment aforesaid of the Court of Appeals of the State of New York, and the said judgment of the Supreme Court of the State of New York, entered upon the said remittitur from the said Court of Appeals, be reversed; in so far as the same modifies the former judgment entered herein on October 4th, 1904, by reducing the same the sum of \$8792.42 with interest from May 5th, 1902.

Dated, June 29, 1908.

_____, *Petitioner*,
By PAUL ARMITAGE, *Attorney*.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original petition for Writ of Errors filed in this office on the 1st day of July, 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

98 [Endorsed:] Court of Appeals of the State of New York.
Wilson R. Hunter, Plaintiff in Error, against Mutual Reserve Life Insurance Company, Defendant in Error. Petition for writ of error. Paul Armitage, Att'y for Pl'ff in Error. Wilson R. Hunter, 280 Broadway, Manhattan Borough, New York City. Read on Application for Writ of Error, June 29, 1908. Edgar M. Cullen, Chief Judge of the Court of Appeals.

99 The Court of Appeals of the State of New York.

WILSON R. HUNTER, Plaintiff in Error,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant in Error.

Now comes, the said Wilson R. Hunter, Plaintiff in Error, and in connection with his petition for a Writ of Error from the Supreme Court of the United States herein, respectfully submits that in the record and proceedings decision and final judgment herein, there is manifest error in the decision and judgment of the Court of Appeals in the State of New York, and in the judgment of the Supreme Court of the State of New York, entered on the 2nd day of July, 1906, upon the remittitur in accordance therewith in this, to wit:

First. It was error for the said Court of Appeals to adjudge and decide that the four separate judgments against the defendant in error in favor of Enoch Wadsworth, a citizen and resident of North Carolina, recovered in the Superior Court of North Carolina, amounting in all with costs to the sum of Eight thousand, Seven hundred Ninety-two and 42/100 (\$8,792.42) Dollars, with interest from May 5th, 1902, were not valid judgments and binding on the defendant and were not entitled to full faith and credit in the
100 Courts of New York as Judicial proceedings of the State of North Carolina.

Second. That it was error to adjudge and decide that the said four judgments recovered by one, Enoch Wadsworth against the defendant in the Superior Court of North Carolina, amounting in all to Eight thousand, Seven hundred Ninety-two and 42/100 (\$8,792.42) Dollars, were not entitled to full faith and credit, and the failure of the said Court of Appeals to award said judgments

full faith and credit in the Courts of the State of New York is contrary to the provisions of Section 1 of Article 4 of the Constitution of the United States.

Third. The final judgment of the said Supreme Court entered in accordance with the judgment of the said Court of appeals reducing the plaintiff in error's judgment theretofore recovered by the amount of the said four judgments so recovered in the Superior Court of North Carolina in favor of the said Enoch Wadsworth for the sum of Eight thousand, Seven hundred Ninety-two and 42/100 (\$8,792.42) Dollars, with interest from May 5th, 1902, is erroneous as against the rights, privileges and immunities of the plaintiff in error under Section 1 of Article 4 of the Constitution of the United States, it being adjudged by the said Court of Appeals and the said Supreme Court that the said four judgments were not valid judgments and said Court of Appeals and said Supreme Court have erroneously refused to give full faith and credit due the same.

Fourth. It was error to adjudge and decide that the said four personal judgments rendered by the Superior Court of the State of North Carolina in favor of Enoch Wadsworth, amounting in all to the sum of Eight thousand, Seven hundred Ninety-two and 101 42/100 (\$8,792.42) Dollars, with interest from May 5th, 1902, were not rendered upon due process of law and that the said Superior Court of North Carolina had not acquired personal jurisdiction over the defendant in error.

Fifth. The Court of Appeals of the State of New York, which is the highest Court of the said State in which a decision in this case could be had, rendered a decision against the rights, privileges and immunity of the plaintiff in error specially set up and claimed by the plaintiff in error under Section 1 of Article 4 of the Constitution of the United States, and such decision was necessary to the judgment rendered by the said Court of Appeals, which judgment was thereafter made on the 2nd day of July, 1906, the judgment of the Supreme Court of said State.

Sixth. It was error to adjudge and decide that the attempted revocation on or about May 17th, 1899, by the defendant in error of the power of attorney theretofore executed by it to James R. Young, Insurance Commissioner, did, as against the plaintiff, Enoch Wadsworth in the said four judgments recovered in the Superior Court of North Carolina, terminate all authority of said Insurance Commissioner to receive process in the said suit brought by the said Enoch Wadsworth.

Seventh. It was error to adjudge and decide that the revocation on or about May 17th, 1899, by the defendant in error of the power of attorney theretofore executed by it to James R. Young, Insurance Commissioner, and the attempted withdrawal at or about that date of the defendant in error from the transaction of business in the

State of North Carolina, did terminate all authority of said
102 Insurance Commissioner to receive service of process in the four suits brought on or about January 20th, 1902, by the said Enoch Wadsworth in the Superior Court of North Carolina, in which judgment was thereafter rendered in favor of the said Enoch

Wadsworth against the defendant in error in the sum of Eight thousand, Seven hundred Ninety-two and 42/100 (\$8,792.42) Dollars.

Eighth. It was error to adjudge and decree that on January 21st, 1902, the date when the Sheriff of Wake County, in the State of North Carolina, duly served the said summonses in the said four suits brought by Enoch Wadsworth against James R. Young, Insurance Commissioner of the State of North Carolina, the defendant in error was not then doing business in the State of North Carolina and subject to the jurisdiction of its Courts and of the said Superior Court.

Ninth. That it was error to adjudge and decree that subsequent to May 17th, 1899, and continuously until after May, 1902, the defendant in error was not doing business within the State of North Carolina and subject to the jurisdiction of its Courts and especially the Superior Court of the State.

The plaintiff in error prays that the Supreme Court of the United States will reverse the judgment aforesaid of the Court of Appeals of the State of New York and the said judgment of the Supreme Court of the State of New York entered upon the remittitur in accordance therewith, in so far as the same modifies the former judgment, entered herein by reducing the same \$8792.42 with interest as aforesaid.

Dated N. Y., June 23rd, 1908.

WILSON R. HUNTER,
By PAUL ARMITAGE,
Attorney.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Assignment of Errors filed in this office on the 1st day of July, 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24th day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,
County Clerk of Westchester County.

103 [Endorsed:] Court of Appeals of the State of New York.
Wilson R. Hunter, Plaintiff in Error, against Mutual Reserve Life Insurance Company, Defendant in Error. Assignment of Errors. Paul Armitage, Att'y for Pl'ff in Error, Wilson R. Hunter, 280 Broadway, Manhattan Borough, New York City. Read on application for a Writ of Error, June 29, 1908. Edgar M. Cullen, Chief Judge Ct. of Appeals.

104

Supreme Court, Westchester County.

WILSON R. HUNTER, Plaintiff in Error,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant in Error.

Know all men by these presents: That the National Surety Company, a Corporation organized and existing under the Laws of the State of New York, having an office and principal place of business at No. 115 Broadway, in the Borough of Manhattan, City of New York, is held and firmly bound unto the above named Mutual Reserve Life Insurance Company, a domestic Corporation, in the sum of Five hundred (\$500.) Dollars, to be paid to the said Mutual Reserve Life Insurance Company, its successors or assigns, to which payment well and truly to be made the said National Surety Company binds itself, its successors and assigns firmly by these presents.

Signed and sealed with its Corporate seal this 27th day of June, 1908.

Whereas, the above named Wilson R. Hunter has prosecuted an appeal by Writ of Error to the United States Supreme Court to reverse a certain judgment rendered in the above entitled action by the Court of Appeals of the State of New York, and the judgment rendered by the Supreme Court of the State of New York upon remittitur therefrom on the 2nd day of July, 1906, whereby it
105 was adjudged that a judgment theretofore recovered by the plaintiff be modified by reducing the same by the sum of Eight thousand Seven hundred Ninety-two and 42/100 (\$8792.42), with interest from May 5th, 1902, and in accordance therewith.

Now, therefore, the condition of the above obligation is such, That if the said Wilson R. Hunter shall prosecute his Writ of Error to effect, and answer all damages and costs if it fail to make its said plea good, then the above obligation to be void; else to remain in full force and virtue.

NATIONAL SURETY COMPANY,
By ARTHUR P. WEST,
Res. Vice-President.

Attest:

[L. s.] WM. A. THOMPSON,
Assistant Secretary.

106

STATE OF NEW YORK,
County of New York, ss:

On this 27th day of June 1908, before me personally appeared Arthur P. West, Res. Vice-President of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the County of New York; that he is the Res. Vice-President of the National Surety Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said Company; that the seal affixed to the within instrument is such corporate seal; that it was

affixed by order of the Board of Directors of said Company, and that he signed said instrument as Res. Vice-President of said Company by like authority; and that the liabilities of said Company do not exceed its assets, as ascertained in the manner provided in Section 3, Chapter 720, of New York Session laws of 1893. And the said Arthur P. West further said that he is acquainted with Wm. A. Thompson and knows him to be the Ass't Secretary of said Company; that the signature of the said Wm. A. Thompson subscribed to the said instrument is in the genuine handwriting of the said Wm. A. Thompson and was thereto subscribed by the like order of the said Board of Directors and in the presence of him, the said Res. Vice-President.

WM. F. GAYNOR,
Notary Public for County of Kings.

Certificate filed in New York, Queens, Richmond and Westchester Counties.

Copy of By-Law.

Be it Remembered, That at a regular meeting of the Board of Directors of the National Surety Company, duly called and held on the first day of May, 1906, a quorum being present, the following By-Law was adopted:

"ARTICLE XIII. SEC. 1. *Signatures Required:* All bonds, recognizances, contracts of indemnity, policies of insurance and all other writings obligatory in the nature thereof, shall be signed by the President, the Vice President, Second Vice President, Third Vice President, or Fourth Vice President, a Resident Vice President, or Attorney-in-fact, and except when signed by an Attorney-in-fact, shall have the seal of the Company affixed thereto duly attested by the Secretary, an Assistant Secretary, or Resident Assistant Secretary. The Vice President, Second Vice President, Third Vice President, Fourth Vice President and Resident Vice Presidents shall each have authority to sign such instruments, whether the President be absent, or incapacitated or not; and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments whether the Secretary be absent, or incapacitated or not. All such instruments executed as herein provided shall be as binding upon the Company as if the same were signed by the President, and duly sealed and attested by the Secretary."

STATE OF NEW YORK,
County of New York, ss:

I, Wm. A. Thompson, Ass't Secretary of the National Surety Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original By-Law.

Given under my hand and the seal of the Company in the County of New York, this 27th day of June, 1908.

[L. s.]

WM. A. THOMPSON,
Asst Secretary.

Approved June 29th, 1908.

[L. s.]

EDGAR M. CULLEN,
Chief Judge Court of Appeals.

STATE OF NEW YORK.

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Bond filed in this office on the 1st day of July 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,
County Clerk of Westchester County.

107 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of New York upon a remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Wilson R. Hunter, plaintiff in error and the Mutual Reserve Life Insurance Company, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treatise, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty,

108 statute, or commission; a manifest error hath happened to the great damage of the said Wilson R. Hunter, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United

States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of June, in the year of our Lord one thousand nine hundred and eight.

JOHN A. SHIELDS,

*Clerk of the Circuit Court of the United States of America
for the Southern District of New York, in the Second
Circuit.*

The foregoing writ is hereby allowed by

EDGAR M. CULLEN,

*Chief Judge of the Court of Appeals
of the State of New York.*

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Writ of Error filed in this office on the 1 day of July 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 1 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

109 UNITED STATES OF AMERICA, ss:

To Mutual Reserve Life Insurance Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the State of New York, in and for the County of Westchester, wherein Wilson R. Hunter, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edgar M. Cullen, Chief Judge of the Court of Appeals of the State of New York, this 29th day of June, in the year of our Lord one thousand nine hundred and eight.

EDGAR M. CULLEN,

*Chief Judge of the Court of Appeals
of the State of New York.*

Allowed June 29, 1908.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Citation filed in this office on the 1 day of July 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 1 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

[Endorsed:] Hunter vs. Mutual Reserve.

110 STATE OF NEW YORK,

County of Westchester, ss:

Clerk's Office of the Supreme Court of the State of New York for the County of Westchester.

I, Frank M. Buck, Clerk of the County of Westchester and of the Supreme Court of the State of New York, for the said County of Westchester, by virtue of the annexed Writ of Error, which was served upon me on the first day of July, 1908, and in obedience thereto, do hereby certify that the foregoing is a true and complete transcript of the record and proceedings had in said Court in the suit of Wilson R. Hunter vs. Mutual Reserve Life Insurance Company, mentioned in said Writ of Error as the same remains of record and on file in my office and that annexed hereto is the petition for said Writ of Error the citation to the writ *in Error*, the assignments of Error, the said Writ of Error served upon me and a copy of the opinion of the court of appeals.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed at my office in the City and County of New York, on the 24th day of July 1908.

[Seal Westchester County.]

FRANK M. BUCK, *Clerk.*

111 [Endorsed:] Supreme Court of the United States. Wilson R. Hunter, Plaintiff in Error, against Mutual Reserve Life Insurance Company, Defendant in Error. Transcript of Record.

Endorsed on cover: File No. 21,276. New York supreme court. Term No. 212. Wilson R. Hunter, plaintiff in error, vs. Mutual Reserve Life Insurance Company. Filed July 29th, 1908. File No. 21,276.





Supreme Court of the United States.

1

WILSON R. HUNTER,
Plaintiff in Error,

AGAINST

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Defendant in Error.

No. 212.

2

PLEASE TAKE NOTICE that the plaintiff in error will on Monday, the 4th day of April, 1910, upon the certified copy of the Order of the Circuit Court of the United States, for the Southern District of New York, granting leave to apply for the Order desired, and upon his verified petition hereto annexed, and upon the verified petition heretofore filed in this Court on the 28th day of February, 1910, for an Order requiring the Receivers of the defendant in error to become parties to this appeal, and on the answer thereto and the affidavit of the plaintiff in error filed in reply, and upon the transcript of record in this case, at the opening of court on that day, or as soon thereafter as counsel can be heard, submit to the Supreme Court of the United States, in its court room at the Capitol, in the City of Washington, in the District of Colum-

3

4 bia, a motion, a copy of which, and of the petition,
are herewith delivered to you.

Dated, N. Y., March 29th, 1910.

Yours, &c.,

PAUL ARMITAGE,
Attorney for Plaintiff in Error,
280 Broadway,
New York City.

To

5 WILLIAM HEPBURN RUSSELL and CHARLES
E. RUSHMORE, as Receivers of the Mu-
tual Reserve Life Insurance Co.;

WM. BEVERLY WINSLOW, Solicitor,
309 Broadway,
New York City;

FIDELITY & DEPOSIT CO. OF MARYLAND,
2 Rector Street,
New York City.

SUPREME COURT OF THE UNITED STATES. 7

<hr/> <p>WILSON R. HUNTER, Plaintiff in Error,</p> <p>AGAINST</p> <p>MUTUAL RESERVE LIFE INSUR- ANCE COMPANY, Defendant in Error.</p> <hr/>	}	No. 212.
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And now comes WILSON R. HUNTER, by his coun- 8
sel, PAUL ARMITAGE, and moves this honorable
Court that an Order be made herein requiring
WILLIAM HEPBURN RUSSELL and CHARLES E.
RUSHMORE, as Receivers of the Mutual Reserve
Life Insurance Company, to make themselves par-
ties to this case within twenty days after the service
of the said Order upon them, and that the citation
herein be amended by including therein the said Re-
ceivers, and for such other and further relief as
to the Court may seem just and equitable, and to
that end he now tenders herein his petition and affi-
davit.

Dated New York, March 29, 1910.

9

WILSON R. HUNTER,
Plaintiff in Error,
By PAUL ARMITAGE,
His Attorney,
280 Broadway,
Manhattan,
New York City.

10 SUPREME COURT OF THE UNITED STATES.

WILSON R. HUNTER,
Plaintiff in Error,

AGAINST

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Defendant in Error.

No. 212.

11

TO THE HONORABLE THE CHIEF JUSTICE AND AS-
SOCIATED JUSTICES OF THE SUPREME COURT OF
THE UNITED STATES.

Now comes WILSON R. HUNTER by PAUL ARMI-
TAGE, his Counsel, and gives this Honorable Court
to understand and be informed:

12

I. That heretofore and on the 17th day of March,
1904, the plaintiff in error by an Agreed Statement
of Facts and Submission of Controversy brought
in the Appellate Division of the Supreme Court,
Second Department, of the State of New York, a
certain suit against the defendant in error on five
certain judgments recovered against it in the
State of North Carolina. Thereafter such proceed-
ings were had in said action, that on the 29th day
of September, 1904, it was ordered and adjudged
that the plaintiff in error have judgment against
the defendant in error for the full amount of said
five judgments with costs.

II. That thereafter judgment was duly entered
in the Clerk's Office of the County of Westchester,
in the State of New York, in favor of the plaintiff
and against the defendant for the full amount of

said five judgments, which, with interest and costs, 13
aggregated \$11,497.10. From the said judgment the
defendant in error appealed to the Court of Ap-
peals of the State of New York, and thereafter on
February 28th, 1906, the Court of Appeals modified
the said judgment by reducing the same by the
sum of \$8,792.42 being the amount of four of the
said judgments so sued upon, and thereafter judg-
ment was duly entered in the Supreme Court of the
State of New York in accordance with the decision
of the Court of Appeals.

III. That thereafter and on June 29th, 1908, 14
your petitioner procured from the Hon. Edgar M.
Cullen, Chief Justice of said Court, a Writ of
Error to this Court together with a citation why
the judgment of the Court of Appeals so rendered
should not be corrected by this Court. That said
citation was duly served upon the Clerk of the
County of Westchester where said judgment roll
was filed, and on the defendant's Attorney and
also on CHARLES E. RUSHMORE, one of the Re-
ceivers who had been appointed for the defendant.

IV. Thereafter the said Writ of Error was duly
returned to this Court by the Clerk of the County
of Westchester, the record filed herein No. 21,276 15
of this Court, and the same has been duly printed
and the case is No. 212 on the October, 1909, Cal-
endar of this Court.

V. On information and belief that the said Re-
ceivers WILLIAM HEPBURN RUSSELL and CHARLES
E. RUSHMORE have now taken possession of all the
assets and property of the said corporation, and are
holding the same as Trustees to distribute among
the creditors.

- 16 VI. On information and belief that at or about the time of the appointment of the Receivers by the United States Circuit Court, there were appointed other and different Receivers in a proceeding instituted in the State Court of the State of New York. That said State Court Receivers made various applications to obtain the property of the defendant in error from the said Receivers WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE and that at length it was decided that the said Receivers appointed by the United States Circuit Court were entitled to the property and an application of the State Court Receivers to have the property turned
- 17 over to them denied. Thereafter an appeal was taken from this, and the said appeal was finally dismissed.

- VII. That after the plaintiff in error was awarded judgment in his favor by the Appellate Division of the Supreme Court, on or about the 29th day of September, 1904, against the defendant for \$1,444.93 and \$87.17 costs, and after an appeal to the Court of Appeals by the defendant in error, it filed in the Office of the Clerk of the County of Westchester on October 10th, 1904, an Undertaking of the Fidelity & Deposit Company of Maryland, a Surety Company, doing business in
- 18 the City of New York, undertaking to pay the said judgment and costs in case the judgment was affirmed. That by filing said bond, the defendant in error procured a stay of execution on said judgment and stayed the plaintiff from collecting the same and suspended the lien of the judgment on any property of the defendant in error. Your petitioner is informed and believes that under the laws of the State of New York, should this Court reverse the decision of the Court of Appeals and reinstate the judgment herein of the Appellate Division, that the said Fidelity & Deposit Company of Maryland, would be liable upon the Undertaking for the full amount of the five judgments.

VIII. That on or about the 28th day of February, 1910, your petitioner applied to this Court on his verified petition that an Order be made requiring the said WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE as Receivers of the defendant in error to make themselves parties to this cause within twenty days after the service of an Order to that effect upon them, and that the citation herein be amended by including therein the said Receivers. That notice of said application was served upon the said Receivers who appeared and filed in opposition thereto an Answer and Return, on or about the 2nd day of March, 1910, to which answer your petitioner filed an affidavit in reply, on the 5th day of March, 1910. 20

IX. For a more detailed statement of the various proceedings heretofore had herein and the facts of this application, your petitioner respectfully refers to his former petition herein, verified the 16th day of February, 1910, and filed in this Court on the 28th day of February, 1910, and the affidavit in reply to the Answer filed by the plaintiff in error, which affidavit was verified March 5th, 1910, and also to the transcript of record filed in this Court.

X. That thereafter this Court rendered on March 21st, 1910, the following decision upon said application: 21

"No. 212. Wilson R. Hunter, plaintiff in error, v. Mutual Reserve Life Insurance Company. Application for an order requiring the receivers of the defendant in error to become parties herein denied without prejudice to an application to the court appointing the receivers for leave to apply for the order desired."

XI. That after the said decision was rendered and on the 28th day of March, 1910, your petitioner applied to the Circuit Court of the United

22 States in and for the Southern District of New York, by which Court the said Receivers WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE were appointed, on due notice to the said Receivers and obtained from the said Court an Order granting to your petitioner leave to apply to this Court for the Order desired. A certified copy of said Order granting leave is hereto annexed.

23 WHEREFORE, your petitioner requests an Order of this Court requiring WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE as Receivers of the Mutual Reserve Life Insurance Company, to make themselves parties to this case within twenty days after the service of the said Order upon them, and that the citation herein be amended by including the said Receivers.

WILSON R. HUNTER,
Plaintiff in Error.

By PAUL ARMITAGE,
his Attorney,
280 Broadway,
Manhattan, New York City.

STATE OF NEW YORK, }
County of New York, } ss.:

24 PAUL ARMITAGE being duly sworn, deposes and says: That he is the Attorney for the plaintiff in error, WILSON R. HUNTER. That he has read the foregoing petition and knows the contents thereof, and that the same is true, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

PAUL ARMITAGE.

Sworn to before me this }
29th day of March, 1910. }

B. W. DAVIS,
Notary Public,
New York County.

UNITED STATES CIRCUIT COURT,

25

SOUTHERN DISTRICT OF NEW YORK.

JAMES C. ROBINSON,
Complainant,

VS.

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Respondent.

26

REUBEN O. SCOVILL,
Complainant,

VS.

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Respondent.

On reading and filing the petition of WILSON R. HUNTER, by his attorney, PAUL ARMITAGE, verified the 26th day of March, 1910,

27

NOW, on motion of PAUL ARMITAGE, attorney for WILSON R. HUNTER, it is

ORDERED, that the said WILSON R. HUNTER be and he hereby is granted leave to apply to the Supreme Court of the United States in a certain case therein pending entitled Wilson R. Hunter, plaintiff in error, against the Mutual Reserve Life Insurance Company, defendant in error, Docket No. 212, for an Order requiring WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE, as Receivers

28 of the Mutual Reserve Life Insurance Company, to make themselves parties to said case within twenty days after the service of the said Order upon them, and that the citation herein be amended by including therein the said Receivers, and for such other and further relief as to the Court may seem just and equitable.

Dated, N. Y., March 26th, 1910.

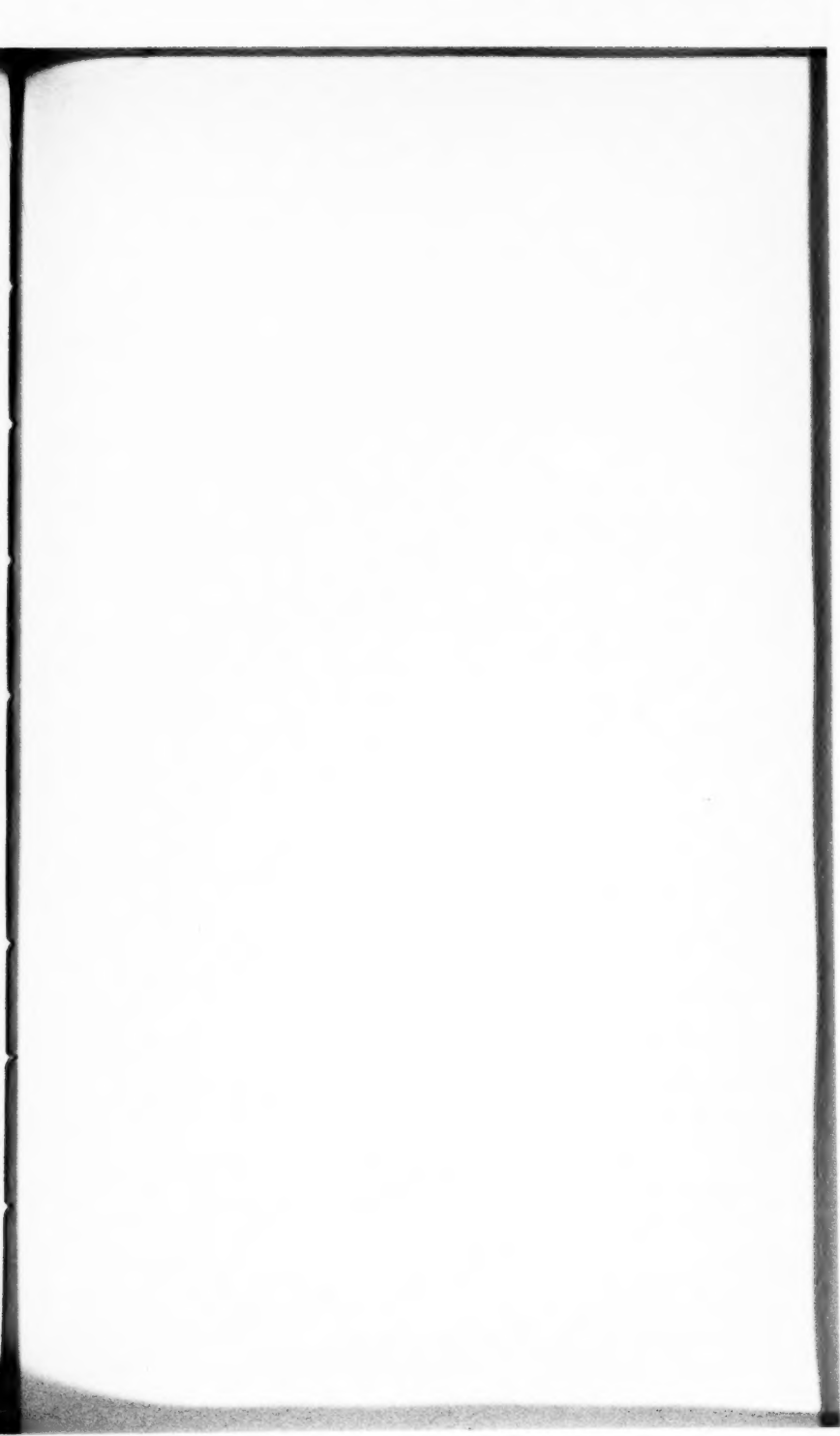
H. G. WARD,
U. S. D. J.

A copy.

JOHN A. SHIELDS,

29 [SEAL]

Clerk.



Supreme Court of the United States. 1

WILSON R. HUNTER,
Plaintiff in Error,

vs.

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Defendant in Error.

No. 212.

2

**Answer, return and opposition to
the application for an order requir-
ing the Receivers of the defendant
in error to become parties to this ap-
peal.**

TO THE HONORABLE CHIEF JUSTICE AND THE ASSO-
CIATE JUSTICES OF THE SUPREME COURT OF THE
UNITED STATES:

Now come William Hepburn Russell and Charles
E. Rushmore as Receivers of the above named de- 3
fendant in error, by William Beverly Winslow,
their counsel (appearing specially and for the pur-
poses of this motion only), and give this Honorable
Court to understand and be informed:

1. That respondents were appointed Receivers of
the properties and assets of said defendant in error
by orders passed by the Honorable H. G. Ward,

4 one of the Judges of the United States Circuit Court for the Second Judicial Circuit, acting in the Southern District of New York, on the 15th and 17th days of February, 1908, and by said orders were authorized to collect, take possession of, preserve, and care for all the property, real, personal and mixed, moneys, bonds, notes, mortgages, bills, drafts and other choses in action of said defendants in error, of whatsoever description and wherever found, and that your respondents duly qualified as such Receivers, executed and filed their bonds and oaths as such Receivers, and have been acting as such thence hitherto.

5 2. That respondents were appointed as such Receivers under the general equity powers of said United States Circuit Court, in pursuance of the prayers of certain bills in equity filed in said Court against said defendant in error, alleging the insolvency of said defendant in error, and praying the appointment of Receivers therefor and on that account, said defendant in error having admitted its insolvency in open court, through an answer filed by its duly authorized solicitors.

3. That respondents' duties, authority and powers are such, and such only, as can be conferred upon Receivers appointed by the United States Circuit
6 Court, under and pursuant to the principles of equity governing the actions of such courts.

4. Respondents admit the allegations contained in the petition to which this is a response, except as the same are hereinafter denied or qualified, but as to the allegations contained in said petition attempting to state the contents of the "agreed statement of facts" referred to therein, respondents refer to said agreed statement of facts as it appears in the printed transcript of record on pages 1 to 29, as showing more fully the facts at issue in the cause of action therein referred to.

5. Qualifying the allegations of Paragraph XIII 7
 of said petition, respondents respectfully refer to
 and make a part hereof the opinion of the Court of
 Appeals of the State of New York, referred to in
 said paragraph, as the same appears in the Trans-
 script of Record, pp. 44-50, in which will appear the
 reasons of said New York Court of Appeals for
 reducing the judgment obtained by said plaintiff in
 error in the Supreme Court of New York.

6. Qualifying the allegation of Paragraph XVI of
 said petition, respondents say that the judgment
 entered by the Supreme Court of the State of New
 York in accordance with the said decision of the
 Court of Appeals was entered on the 17th day of 8
 May, 1906, in the office of the County Clerk of
 Westchester County in the State of New York,
 and was to the effect that the judgment entered
 in the Supreme Court of New York for said West-
 chester County on October 4, 1904, be modified by
 reducing the same by the sum of ten thousand
 sixty-seven and 32/100 (\$10,067.32) dollars (being
 the amount of the reduction required by the said
 Court of Appeals of said State of New York, with
 interest thereon as provided by the judgment of
 said Court) and that the judgment theretofore en-
 tered in the said Supreme Court on the 4th day
 of October, 1904, as so modified and reduced, be
 affirmed. 9

7. That the said judgment was thereafter paid by
 said defendant in error to said plaintiff in error or
 to his attorney of record, and was SATISFIED OF REC-
 ORD in the County Clerk's Office of Westchester
 County, in the State of New York, on July 3rd,
 1907, and that since said 3rd day of July, 1907, there
 has been no judgment against said defendant in
 error in favor of said plaintiff in error by reason of
 the cause of action stated in the transcript of record
 herein.

- 10 8. Qualifying the allegations of Paragraphs XVIII, XIX and XX of said petition, your respondents allege that after the appointment of your respondents as hereinbefore stated, and to-wit, on the 19th of February, 1908, a summons and complaint was filed in the Supreme Court of the State of New York by the People of the State of New York against said defendant in error, upon which judgment was entered on April 10th, 1908, whereby said defendant in error was dissolved, and Receivers were appointed for it by the Supreme Court of the said State of New York; and while the respondents herein contested the validity of the said judgment of the Supreme Court of the said State of New York, in so
- 11 far as it appointed Receivers and undertook to give such Receivers authority to take possession of the assets and property of said defendant in error then in respondents' possession (which contention was upheld by the United States Circuit Court for the Southern District of New York—*Robinson vs. Mutual Reserve Life Insurance Company*, 162 Fed., 794), they have never contested the validity of the said order so far as it undertook to and did dissolve the said corporation on the said April 10th, 1908, nor has the validity of such dissolution been questioned by any other persons, so far as respondents have knowledge.

- 12 9. Qualifying the allegations of Paragraphs XXVII and XXVIII of said petition, respondents allege that the order finally dismissing the appeal taken in behalf of the said Receivers appointed by the Supreme Court of the State of New York, was entered on the 8th day of May, 1909.

10. Qualifying the allegations of Paragraph XXIV of said petition, your respondents say that whatever judgment was recovered by said plaintiff in error against said defendant in error, as set forth in said petition, was paid and fully SATISFIED OF RECORD on July 3rd, 1907, before the appointment of your

respondents as Receivers herein, and that on April 10, 1908, the date upon which the corporate existence of the defendant in error ceased by its dissolution, there was no judgment against said defendant in error as a result of the cause of action set forth in said petition, and they further say, upon information and belief and advice of counsel, that the said suit and cause of action abated through the dissolution of said defendant in error; (see *Pendleton vs. Russell*, 144 U. S., 640; *Rogers vs. Adriatic Fire Insurance Company*, 148 N. Y., 34; and *Polk vs. Mutual Reserve Life Insurance Association* (2 cases), 165 Federal, 1006). 13

11. On information, belief, and advice of counsel, that the only remedy of said plaintiff in error, if any he now has, is to intervene in the equity causes under orders entered in which your respondents are now acting as Receivers of the property and assets of said defendant in error, and file and prove his claim therein. 14

And now having fully responded to the application or petition and motion of said plaintiff in error, respondents ask to be hence dismissed with their costs.

WILLIAM HEPBURN RUSSELL and
CHARLES E. RUSHMORE, as Receivers of the
Mutual Reserve Life Insurance Company.

By WM. BEVERLY WINSLOW,
Their Attorney. 15

309 Broadway,
New York City.

STATE OF NEW YORK, }
County of New York, } ss.:

WILLIAM HEPBURN RUSSELL, being duly sworn, deposes and says: That he is one of the Receivers of the defendant in error, Mutual Reserve Life Insurance Company; that he has read the foregoing paper-writing and knows the contents thereof, and

16 that the same is true, except as to the matters therein stated to be alleged on information and belief, and as to these matters he believes it to be true.

WM. HEPBURN RUSSELL.

Subscribed and sworn to }
before me this 2nd day }
of March, 1910.

A. COLLINS,

[NOTARIAL SEAL.] Notary Public,
New York County.

17

18

Supreme Court of the United States.

WILSON R. HUNTER, *Plaintiff in Error*,
vs.
 MUTUAL RESERVE LIFE INSURANCE COMPANY,
Defendant in Error.

Sir : Please take notice that I shall apply to the Supreme Court of the United States, at its court house, at Washington, D. C., at the opening of Court on the 7th day of March, 1910, for permission to file an affidavit, a copy of which is hereto annexed, in answer to your return. 2

Dated, New York, March 5, 1910.

Yours, etc.,

DOUGLAS & ARMITAGE,
Attorneys for Plaintiff in Error,
 280 Broadway, Bor. Manhattan, New York City.

TO WILLIAM B. WINSLOW, ESQ.,
Atty. for Defendant in Error.
 309 Broadway, New York City.

SUPREME COURT OF THE UNITED STATES.

WILSON R. HUNTER, <i>Plaintiff in Error</i> ,	} No.
<i>vs.</i>	
MUTUAL RESERVE LIFE INSURANCE COMPANY,	
<i>Defendant in Error.</i>	212.

STATE OF NEW YORK, }
 County of New York. } *ss:*

Paul Armitage, being duly sworn, deposes and says: that he is an attorney and counsellor at law and represents the Plaintiff in Error in the above entitled proceedings.

- 4 That he has just received, March 5th, 1910, at 10.30 o'clock A. M., a copy of the answer and return of the receivers of the Defendant in Error to become parties to this appeal.

That he has read the same and that the statement contained in paragraph seventh that "the said judgment was thereafter paid by said Defendant in Error to this Plaintiff in Error or to his attorney of record, and was satisfied of record in the County of Westchester, in the State of New York, on July 3rd, 1907," and likewise appearing in paragraph tenth, is incorrect and misleading.

- 5 That this suit as appears by the transcript of record herein, page 51, paragraph 2, also page 18, paragraph 32, page 21, paragraph 42, page 23, paragraph 52, page 25, paragraph 62, and page 28, paragraph 72, was brought to enforce in the State of New York, five distinct and separate judgments for distinct and separate amounts recovered in the State of North Carolina against the defendant, as follows:

One judgment in favor of Rufus W. Hicks, a citizen and resident of North Carolina, for one thousand one hundred and fifty-three and 97/100 (\$1,153.97) dollars, with interest thereon from May 5th, 1902, together with eighteen and 95/100 (\$18.95) dollars, costs.

- 6 Four separate judgments each in favor of Enoch Wadsworth, a citizen and resident of North Carolina, amounting in all, with costs, to the sum of eight thousand seven hundred and ninety-two and 42/100 (\$8,792.42) dollars, with interest thereon from May 5th, 1902.

The Appellate Division of the Supreme Court sustained the Plaintiff in Error five causes of action. The Court of Appeals of the State of New York as appears by its decision, Record pp. 44-50, sustained the plaintiff's first cause of action on the first judgment, but refused to recognize the plaintiff's four separate causes of action based upon the other four distinct and separate judgments.

Judge Hiscock in writing the opinion of the Court of Appeals said, referring to this cause of action:

"It is conceded by appellant that the judgment appealed from should be affirmed so far as it allows recovery upon the judgment under the North Carolina policy." 7

Transcript of Record, p. 44, par. 78.

It thus appears that there was no dispute in the Court of Appeals, but that the defendant in error was liable on the first cause of action.

After the decision of the Court of Appeals, the defendant paid the amount of this first cause of action, to wit, the sum of \$1,153.97, with interest and costs awarded in the Appellate Division. It has not, however, paid or offered to pay the other four judgments of the plaintiff in error recovered in the State of North Carolina. 8

PAUL ARMITAGE.

Sworn to before me this 5th day of March, 1910.

B. W. DAVIS,

Notary Public, N. Y. County.

Endorsed: Service of a copy of the within received on the 5th day of March, 1910, is hereby admitted.

WM. B. WINSLOW,

Attorney for Receivers.

Supreme Court of the United States.

WILSON R. HUNTER,
Plaintiff in Error,

AGAINST

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Defendant.

October Term,
1910.
No. 39.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

This is an appeal by the plaintiff, WILSON R. HUNTER, from a judgment of the Court of Appeals of the State of New York, by which it reduced a judgment theretofore awarded the plaintiff, by the sum of \$8,792.42, with interest from May 2nd, 1902 (Record, p. 41, fols. 70-72).

The amount so deducted from plaintiff's judgment represented four judgments of the Superior Court of the State of North Carolina against the defendant in favor of one Enoch Wadsworth, a citizen and resident of that State (p. 25, fols. 42, 43) and owned by the plaintiff.

The cause comes here on a writ of error (Record, pp. 60, 107, 108) on the ground that the courts of New York State have refused full faith and credit to these judgments of the State of North Carolina (U. S. Constitution, Article 4, Section 1; Record, pp. 55-57).

Statement of Facts.

The action was submitted on agreed statement of facts.

Plaintiff is the assignee and owner of five judgments recovered against defendant in the State of North Carolina by a citizen of that State in May, 1902, aggregating \$9,965.37 (see Record, pp. 18-19, pars. 32, 33; p. 21, pars. 42-43; p. 23, pars. 52-53; pp. 25-26, pars. 62-63; p. 28, pars. 72-73).

Defendant is a life insurance corporation, duly organized under the laws of New York, and for many years prior to the 20th of May, 1899, was doing a regular insurance business upon the assessment plan in the State of North Carolina (p. 1, fol. 3). Chapter 54 of the Laws of 1899, among other things provided, that no foreign insurance company should do business in that State until

" It shall, by a duly executed instrument filed in his office, constitute and appoint the Insurance Commissioner or his successor its true and lawful attorney upon (1) *whom all lawful process in any action or legal proceeding against it may be served*, and therein shall agree that *any lawful process* against it which may be served against its said attorney, shall be of the same force and validity as if served on the company, and (2) the authority thereof shall continue in force irrevocable *so long as any liability of the company shall remain outstanding in this commonwealth* " (p. 5, fol. 9).

The statutes of North Carolina continuously since the year 1876 (which antedates the entrance of the company into the State), and during all the time that the defendant has been doing business in said State, provided for service of *any legal process* upon a designated *state official* in all actions against foreign insurance companies doing business within the State, who should remain the agent of such company

for the purpose of service, so long as any liability of the company remains outstanding in the State. The material portions of the statutes are contained in the record at pages 2-4 (fols. 4-6).

The defendant complied with said statutes, filed the requisite authority and designated an agent for the purposes of service (p. 4, par. 5). On or about the 13th day of April, 1899, the defendant, pursuant to the statute above referred to, duly executed to James R. Young, the Insurance Commissioner of the State, or his successor in office, and filed in the office of said Commissioner written authority, by which the said Young, as such Commissioner, was constituted the true and lawful attorney of said defendant:

" Upon whom all lawful process in any action or legal proceeding against it may be served, subject to and in accordance with all the provisions of the laws of the State of North Carolina now in force and such other laws as may hereafter be enacted in relation thereto; and said company does hereby expressly agree that any lawful process against it which may be served upon said James R. Young, Insurance Commissioner, or his successor, shall be of the same force and validity as if served on this company, and this authority shall continue in force and irrevocable so long as any liability of said company remains outstanding in said State " (Record, p. 6, fol. 10).

Thereupon a license was issued to it to do business (p. 7, fols. 11-12).

Continuously after the said appointment of the Insurance Commissioner as agent as aforesaid and until about the 20th day of May, 1899, defendant did a regular life insurance business in said State as theretofore with agents in said State actively soliciting and writing insurance (fols. 16-17). On or about the 20th day of May, 1899, the defendant filed with the Insurance Commissioner of said State a

writing by which it attempted to revoke the above authority of the Insurance Commissioner as its agent for the purpose of the service of the process (pp. 8-9, fols. 15 and 16).

At the time of this attempted revocation and at the time of the institution of the various suits on which judgment was recovered by the plaintiff herein, the defendant had outstanding liabilities in the State of North Carolina on policies which it had duly issued to citizens thereof (fols. 16, 17). On or about May 18th, 1899, the defendant withdrew its local agents from the State of North Carolina (p. 9, fol. 16), but it continued thereafter to collect and receive premiums on outstanding policies in said State and paid losses thereon (pp. 9, 10, fols. 16, 17); to send agents into the State with authority to adjust particular losses (p. 10), who adjusted the same; it designated within the State a bank to collect premiums on a certain policy and to pay death losses thereon; it authorized an attorney, within that State, to compromise a disputed claim, and in a certain instance issued a new policy to a policyholder on the surrender of the old policy (Record, pp. 10, 11, fols. 17-19).

All these acts were done *subsequent* to the attempted revocation of the power of attorney, and many of them were done at the time of and even after the institution of the suits on which the plaintiff's judgments in North Carolina were recovered (p. 17, fol. 29; p. 19, fol. 33).

All of the plaintiff's judgments were procured by service of process on the Insurance Commissioner of North Carolina on or about the 20th and 21st days of January, 1902 (p. 17, fols. 30, 31; p. 20, fols. 34, 35; p. 22, fols. 37, 38; p. 24, fols. 41, 42; p. 27, fols. 45, 46), and said Insurance Commissioner duly mailed to the defendant copies of said summonses in all of said actions on the same day, to wit, January 21st, 1902, which were received by the defendant in New York in due course of mail (fols. 31, 35, 38, 42, 46).

Although the defendant thus had notice of all these suits, it is conceded that no appearance or defence was interposed therein. And that it allowed judgments against it to be rendered by default (fols. 31, 32, 36, 37, 39, 40, 43, 47).

It is also stipulated that the plaintiff in each one of the actions in North Carolina, in whose favor judgment was rendered, was at all times a resident and citizen of that State (fols. 29, 31, 35, 36, 39, 40, 41, 43, 44, 46, 47), that the Superior Court of North Carolina, in which the said judgments were recovered, was a Court of general jurisdiction (p. 11, par. 20), and had jurisdiction of actions against a foreign corporation by a resident of that State for *any cause of action* (p. 11, par. 21). It is also conceded that all the judgments so recovered were duly assigned to the plaintiff herein (fols. 36, 39, 40, 43, 44, 47).

It further appeared that these five judgments so recovered against the defendant in the Superior Court were upon contracts of insurance issued by the defendant in one case to a resident of North Carolina while it was doing business there (fol. 31). In the remaining four cases to residents of New York and New Jersey. After the defendant's attempted withdrawal from business in North Carolina, the policies of insurance were acquired by one Enoch Wadsworth, a citizen of North Carolina (fols. 35, 38, 39, 42, 43, 46).

On this state of facts the Appellate Division of New York State awarded plaintiff judgment for the full amount of said five judgments (pp. 31, 32, 34, 37).

The defendant thereupon appealed to the Court of Appeals and filed a surety company bond to stay plaintiff from collecting this judgment.

On appeal by the defendant, the Court of Appeals sustained the plaintiff's judgment in so far as it was based on the North Carolina judgment recovered on the policy of insurance issued in that State, but reversed or reduced his judgment in so far as it was

founded on the other four North Carolina judgments based on policies issued elsewhere (Record, p. 44-50; p. 43). Thereupon the plaintiff by writ of error appealed to this Court.

The defendant, Mutual Reserve Insurance Company, subsequently became insolvent, receivers were appointed for it, and by an order of this Court were brought in as parties defendant to this appeal.

The decision of the Court of Appeals from which this writ of error is taken, was predicated on two grounds. First, that on the stipulated facts the insurance company did not continue doing business in the State of North Carolina after the attempted revocation of the Insurance Commissioner's authority to receive process and at the time of service thereof in these actions, and hence it could revoke the power and was not subject to jurisdiction of the North Carolina courts (fols. 82, 83). Second, that the power of attorney, though irrevocable by its terms so long as liabilities of the company continued, was revocable as to all persons save residents of the State of North Carolina who had taken out policies of insurance in reliance thereon (fols. 83, 86).

We maintain that in both these respects the learned Court fell into error.

POINTS.

Certain preliminary propositions of law are too well settled to need more than a brief statement. These are:

I.

A State has the arbitrary power to exclude foreign insurance companies altogether from her territory.

Hooper vs. California, 155 U. S., 648,
at 655.

II.

The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. Issuing a policy of insurance is not a transaction of commerce. Such contracts are not interstate transactions though the parties may be domiciled in different States. They do not constitute a part of the commerce between the States.

Paul vs. Virginia, 8 Wall., 168.

Phil. Fire Insurance Co. vs. N. Y., 119 U. S., 110.

Crutcher vs. Kentucky, 141 U. S., 47.

Hooper vs. California, 155 U. S., 648, at 654.

Two corollaries are deducible from the foregoing proposition. First it follows that:

III.

A State can inhibit the negotiation of insurance policies within her confines even through the medium of agents sent from other States.

(See cases cited under II.) A second necessary consequence is that

IV.

A State has the power if she allow any such insurance company to enter her confines, to determine the conditions on which the entry shall be made and the right to enforce any conditions so imposed. The power to exclude embraces the power to regulate and the power to enact and to enforce such regulations.

Hooper vs. California, 155 U. S., 648.

The logical conclusion from these four propositions is that

V.

When a foreign insurance corporation undertakes to transact business in a State other than that in which it is incorporated, it submits itself to the authority of the courts of such other State, and is bound, so long as that business continues, by the statutory provisions respecting the method of such courts obtaining jurisdiction over it.

And such is the law.

Pringle vs. Woolworth, 90 N. Y., 509.

People vs. Life Insurance Co., 7 App. Div., 297.

Gibbs vs. Queens Insurance Company, 63 N. Y., 120.

"It becomes bound by judgments rendered upon service on the designated agent, because it has consented so to be bound."

Douglass vs. Insurance Company, 138 N. Y., 220.

Mutual Reserve Co. vs. Phelps, 190 U. S., 147.

Gibson vs. Mfg. Insurance Co., 144 Mass., 81.

Aldich vs. Blatchford, 177 Mass., 369.

"It (the foreign corporation) cannot agree to conditions as the price of admission and after having been admitted turn around and dispute them."

People vs. Fire Association, 92 N. Y., 311.

Vose vs. Cockroft, 44 N. Y., 415.

Sherman vs. McKeon, 38 N. Y., 266.

Phyfe vs. Eimer, 45 N. Y., 102.

"When a foreign corporation sends its agents into another State, or transacts its business there, availing itself of the protection of the laws of such State, there is no just reason why it should not be deemed to have subjected itself through its agents to the jurisdiction of the courts of that State" (93 N. Y., p. 597).

To the solution of the problem whether the four judgments recovered by Wadsworth were valid and were entitled to be given extra territorial effect under the full faith and credit clause of the Constitution, it becomes a material inquiry to ascertain whether at the time of service of process in January, 1902, the Mutual Reserve Insurance Company was engaged in doing business within the State of North Carolina. For, if it were, it cannot be seriously contested that the service on the Insurance Commissioner was ineffectual against it.

Mutual Life Ins. Co. vs. Spratley, 172 U. S., at 610.

Mutual Reserve Association vs. Phelps, 190 U. S., 147.

In fact, it was frankly conceded by the learned Judge who wrote the opinion of the Court of Appeals of New York State that this would be so. He says (see Record, p. 46, fol. 82):

“IT MAY BE ASSUMED AT ONCE THAT IF DEFENDANT UPON A FAIR CONSTRUCTION OF LANGUAGE AND OF ITS ACTS DID CONTINUE GENERALLY TO TRANSACT AND CARRY ON THE BUSINESS OF INSURANCE IN NORTH CAROLINA AFTER ITS PURPORTED REVOCATION OF ITS POWER OF ATTORNEY AND WITHDRAWAL FROM SUCH STATE, THE LATTER SHOULD BE HELD INEFFECTUAL TO PREVENT A CONTINUANCE OF THE AUTHORITY OF THE INSURANCE OFFICIAL TO RECEIVE SERVICE OF A SUMMONS. THE AUTHORIZATION BY THE COMPANY OF SERVICE UPON SAID OFFICIAL WAS A CONDITION OF ITS TRANSACTING BUSINESS IN SAID STATE, AND SO LONG AS SUCH TRANSACTION OF BUSINESS CONTINUED THE COMPANY SHOULD NOT BE ALLOWED TO ESCAPE THE CONSEQUENCES OF ITS AGREEMENT BY ANY DECEPTIVE OR APPARENT WITHDRAWAL.”

On the threshold of the inquiry we are confronted with the question, was this insurance company doing an insurance business within the State at the time of service of process. If this is answered in the affirmative, then all the other questions in the case lapse; the Wadsworth judgments were duly rendered, valid and enforceable, and judgment of the Court of Appeals refusing to extend full faith to them, should be reversed.

We submit

VI.

Upon the facts herein, the defendant company continued to do business in North Carolina, after the attempted revocation of the power of attorney given to the Insurance Commissioner, and was actually doing business within the State on the date when service of process was made in each of the suits resulting in the four judgments.

Before proceeding, let us restate the proposition already laid down in Point II as to the peculiar nature of the business of insurance in its relation to Interstate Commerce. The utterances of this Court define it with precision.

In *Paul vs. Virginia* (8 Wall., 168) this Court, speaking through Mr. Justice Field, said:

“Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter, offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States. The policies do not take effect—are not executed contracts—until delivered by the agent in Virginia. They are then local transactions, and are governed by the

local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York whilst in Virginia would constitute a portion of such commerce" p. 183.

This language was reiterated in the case of

Phila. Fire Ins. Co. vs. New York (119 U. S., 110).

In *Crutcher v. Kentucky*, 141 U. S., 47, *supra*, the Court, in applying the exception to the general rule, held that the State of Kentucky was without power to prevent a corporation engaged in interstate commerce from entering that State and carrying on its business therein, and also pointed out the distinction between the making of contracts of insurance and interstate commerce, or the necessary instrumentalities thereof, as follows:

"The case is entirely different from that of foreign corporations seeking to do a business which does not belong to the regulating power of Congress. The insurance business, for example, cannot be carried on in a State by a foreign corporation without complying with all the conditions imposed by the legislation of that State. So with regard to manufacturing corporations and all other corporations whose business is of a local and domestic nature, which would include express companies whose business is confined to points and places wholly within the state. The cases to this effect are numerous" (p. 59).

In *Hooper vs. California* (155 U. S., 648, at 655), after quoting with approval the foregoing extracts, this Court said:

"The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no

difference whatever between insurance against fire and insurance against 'the perils of the sea.'

The State of California has the power to exclude foreign insurance companies altogether from her territory, whether they were formed for the purpose of doing a fire or a marine business. She has the power, if she allows any such companies to enter her confines, to determine the conditions on which the entry shall be made. And, as a necessary consequence of her possession of these powers, she has the right to enforce any conditions imposed by her laws as preliminary to the transaction of business within her confines by a foreign corporation, whether the business is to be carried on through officers or through ordinary agents of the company, and she has also the further right to prohibit a citizen from contracting within her jurisdiction with any foreign company which has not acquired the privilege of engaging in business therein, either in his own behalf or through an agent empowered to that end. The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory of the State which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent, subject always, of course, to the paramount authority of the Constitution of the United States."

It is thus seen that the business of insurance is not within the protection of the Interstate Commerce clause of the U. S. Constitution. A foreign insurance corporation has no right to do any part of its insurance within the borders of a State, except by its express permission and under the conditions imposed.

This cardinal distinction existing between the business of insurance and that of a corporation or person engaged in *interstate commerce* is of prime importance in this case. It is because the learned Court of Appeals of New York lost sight of the

same, that it reached the conclusion that the defendant insurance company was not, at the time of service of process, doing business within the State of North Carolina.

In the majority of cases where the question is presented whether a foreign corporation is so engaged in a business within a State as to subject it to process or taxation, the *corporation is one whose business falls within the definition of interstate commerce*:—such as manufacturing companies, railroads, express companies and the like. *Such corporations can invoke the protection of the U. S. Constitution and cross the borders of a foreign State without her permission, so long as its business done there is confined to interstate commerce.* Concretely, a New York manufacturing company, may send its salesmen into the State of North Carolina, enter into contracts there with her citizens and deliver goods from the home office. Such acts would unquestionably be “doing business” in the State of North Carolina within every commercial or legal definition of the phrase. But such acts would not subject the New York corporation to the jurisdiction of North Carolina, because, and the reason is plain, the corporation had the absolute right under the United States Constitution to engage in a limited business within every other State, *i. e.*, *Interstate Commerce*. So long as it did not overstep that right the State of North Carolina was without power over it. It was merely exercising its inherent and natural rights as a citizen under the United States Constitution.

Hence, in every case of a foreign corporation of this character the question to be determined in advance of subjecting it to the control of a State, is not whether the corporation is doing business within the State, but *whether it is doing a local business therein*—in other words, whether it is doing an intrastate business. *The corporation has the absolute right, with or without consent, to do business of a limited character within other States. It is only*

when it undertakes to engage in a local business elsewhere than in the State of its creation that it comes within the grasp and control of other State sovereignty.

The case of a foreign insurance company is wholly different. It is not engaged in interstate commerce. No portion of its business is of that character. It has no right by virtue of the United States Constitution or otherwise to engage in any part of its business within the borders of any other State than that of its birth, unless with express or implied permission of that other State. If the corporation do so, it submits itself to the jurisdiction of the sister State and its courts.

In determining, therefore, whether a foreign insurance company is subject to the jurisdiction of the courts of another State, the inquiry is different from that involved in the case of a company doing an interstate commerce business.

The question to be solved is, Does the insurance corporation do any portion of its business within the State in question? If so, it is within the control of the State so long as that business continues. It is not essential to the support of jurisdiction to show that the insurance company is doing a local business in the sister State, it is enough that it is doing and continues to do any part of its business therein.

And this Court has so held (see Spratley & Phelps cases, post).

The inquiry, therefore, has a broader range and wider scope. The decisions rendered in cases of companies engaged in interstate commerce only tend to mislead and confuse. This distinction is familiar to this Court. It is that existing between interstate and intrastate commerce. The pertinency of the distinction thus elaborately dwelt upon to the problem *sub judice* now becomes apparent. The corporation before the Court here is one engaged not in interstate commerce, but exclusive in insurance (Record, p. 2, fol. 3). The only business that

it has ever carried on or sought to carry on in the State of North Carolina was that of insurance (p. 3, fol. 4; p. 9, fol. 16). The question, therefore, is not was it doing a *local business* in North Carolina at the time of service of process but was it carrying on an insurance business in the broadest sense of that term, within the State?

The scope of the inquiry is now defined. The proportions of the problem before the Court are now seen:

It is to ascertain whether on the conceded facts here, the Mutual Reserve Life Insurance Corporation was not, at the time of the service of process on which the four Wadsworth judgments are founded (and long after) doing a substantial portion of its insurance business in the State of North Carolina.

After setting out the various former statutes of North Carolina prescribing the conditions under which foreign insurance companies are entitled to do business therein and are "*authorized to make in said State contracts of Life Insurance on Assessment Plan*" (p. 7, fol. 11), the following stipulated facts appear (p. 3, par. 3rd; p. 4, par. 5th):

"PARAGRAPH THIRD.—Prior to March 13, 1883, the said Mutual Reserve Life Insurance Company had duly complied with the provision of said Chapter 157 of the Laws of 1876-77 of North Carolina above set forth, and was duly admitted to transact business in the said State."

"PARAGRAPH FIFTH.—Prior to March 13, 1883, the said Mutual Reserve Life Insurance Company under its former name of Mutual Reserve Fund Life Association, had duly complied with the provisions of the said Chapter 57 of the Laws of 1883 of North Carolina above set forth, and was duly admitted to transact business in the said State."

The Willard Act [that in question] is then quoted *in extenso* (Record, pp. 4-5); the filing by the Insur-

ance Company of the power of attorney required by the Act is recited, which power of attorney contained a stipulation that (p. 6, fol. 10)

"the Mutual Reserve Fund Life Association of the City of New York and the State of New York, desiring to transact business in the State of North Carolina in conformity with the laws thereof, does hereby make, constitute and appoint James R. Young, Insurance Commissioner of the State of North Carolina, or his successor, its true and lawful attorney in and for said State, upon whom all lawful processes in any action or legal proceeding against it may be served, subject to and in accordance with all the provisions of the laws of the State of North Carolina now in force, and such other laws as may hereafter be enacted in relation thereto; and said Company does hereby expressly agree that ANY LAWFUL PROCESS against it which may be served upon said James R. Young, Insurance Commissioner, or his successor, shall be of the same force and validity as if served upon this Company, and this authority shall continue in force and irrevocable so long as any liability of the said company remains outstanding in the said State."

It is then stipulated that (p. 6, par. 8):

"After the filing of said power of attorney, but as of April 1st, 1899, the Insurance Commissioner of the State of North Carolina issued to the said Mutual Reserve Fund Life Association a license, as follows: 'No. 37. State of North Carolina, Insurance Department.

'RALEIGH, April 1st, 1899.

'The Mutual Reserve Fund Life Insurance Company of New York, having filed an application with this Department to do business in the State of North Carolina. This is to certify, That said Company has complied with the North Carolina Insurance Act of 1899,' and is authorized to make in this State contracts of Life Insurance on Assessment Plan."

The following dates are important in order to sieze the significance of the succeeding stipulations of fact:

May 18th, 1899, was the date when the Mutual Reserve Life Insurance Company attempted to end its *local* business in North Carolina (pp. 8, 9; fols. 15-16).

January 21st and 22nd, 1902, was the date of service of process of the judgments in question (p. 20, fols. 34, 35; p. 22, fols. 37, 38; p. 24, fols. 41, 42; p. 27, fols. 45, 46).

The following stipulations of fact appear (Record, pp. 9-11, pars. Eleventh to Nineteenth):

“ELEVENTH: The defendent under the name of the Mutual Reserve Life Association transacted the business of life insurance upon the co operative or assessment plan generally in the State of North Carolina, having local agents in that State, from the year 1883 up to the 17th day of May, 1899.

TWELFTH: That the policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association, between the year 1883 and the 17th day of May, 1899, have been and are in force in the State of North Carolina, and were in force on January 20th and 21st, 1902.

THIRTEENTH: That on the 18th day of May, 1899, the defendant withdrew all its agents from the State of North Carolina, and since that date has had no agent in the State of North Corolina, this admission being, however, without prejudice to the disputed question as to whether the resolution adopted by the defendant May 17th, 1899, purporting to revoke the power of attorney theretofore given to James R. Young, Insurance Commissioner, was effective to revoke and terminate his authority as attorney for service under such power of attorney as regards the plaintiff's assignors.

FOURTEENTH: That since the 18th day of May, 1899, premiums or assessments upon policies of the defendant issued by it under its

former name of the Mutual Reserve Fund Life Association between the year 1883 and the 17th day of May, 1899, and outstanding in the State of North Carolina, have been paid to the defendant by being remitted to it direct by mail by the policy-holders at its home office in the City, County and State of New York, where by the terms of the policies such premiums were in each case payable, and such premiums or assessments have been received by the defendant when so remitted by mail at its said home office.

FIFTEENTH: That since the 18th day of May, 1899, where death losses have occurred in North Carolina under policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association between the year 1883 and the 17th day of May, 1899, the amount of such losses, as adjusted, has from time to time been paid by the defendant to the person entitled to receive the same by mailing a check for the amount of the loss to such person from the home office of the defendant in the City, County and State of New York, where, by the terms of the policies in each case, the loss was payable.

SIXTEENTH: That in June, 1902, a claim was made upon the defendant under a policy issued by the defendant on the life of one Edward Broadhurst, in Washington, in the District of Columbia, where the said Edward Broadhurst resided and died. The validity of this claim was disputed by the defendant and an adjuster was sent to the City of Washington in the District of Columbia, for the purpose of adjusting the loss there. Such adjuster found that the beneficiary resided in the City of Wilmington in the State of North Carolina, and he, therefore, went to that city and adjusted the loss with her there in the month of June, 1902. The adjustment of this particular loss was the only authority the adjuster had at the time and he was sent to make such adjustment only; he did have authority to make the same.

SEVENTEENTH: That on August 19, 1899, Edwin G. Hill of New Bern, North Carolina, who held a policy issued by the defendant under

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TWELFTH: That the policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association, between the year 1883 and the 17th day of May, 1899, have been and are in force in the State of North Carolina, and were in force on January 20th and 21st, 1902.

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SEVENTEENTH: That on August 19, 1899, Edwin G. Hill of New Bern, North Carolina, who held a policy issued by the defendant under

its former name of the Mutual Reserve Fund Life Association prior to May 17, 1899, died in the City of New Bern, North Carolina, and claim was made upon the defendant under the said policy, and proofs of loss and claim presented to it at its home office in the City of New York, where, under the terms of the policy, the loss was payable. In January, 1900, the defendant through its proper officer, wrote from its home office in New York to the beneficiary under the policy in New Bern, North Carolina, that it was prepared to pay the loss and would forward check for the amount of the same to the Citizens' Bank of New Bern, North Carolina, where the beneficiary could obtain the same upon payment of two post-mortuary calls or assessments due on the policy. The defendant did so mail said check, and on February 15, 1900, the beneficiary under said policy went to the Citizens' Bank of New Bern, obtained the check, and there handed to the cashier of said bank a check for the two post-mortuary assessments to be transmitted to the defendant.

EIGHTEENTH: That in August, 1902, a claim was made upon the defendant under a policy issued by it under its former name of the Mutual Reserve Fund Life Association prior to May 17, 1899, on the life of one Stanley Bratcher for \$1,000. This claim was disputed by the defendant, and suit was threatened. At that time Col. John W. Hinsdale was a member of the Bar of the State of North Carolina, and had been at times retained by the defendant, and upon the threat of suit in the Bratcher case the defendant retained Col. Hinsdale as an attorney, and he subsequently, during the month of August, 1902, arranged a compromise of the case for \$475, and drew his draft on the defendant for that amount, which was paid by the defendant on presentation of said draft to it at its home office in the City of New York. The negotiations had by Col. Hinsdale with the other side with reference to this claim were had in the month of August, 1902, in the City of New Bern, North Carolina.

NINETEENTH: That on the 21st day of January, 1886, the defendant under its former name of the Mutual Reserve Fund Life Association issued and delivered to one Mary E. Carstarphen, in the State of North Carolina, its policy for \$5,000. In October, 1899, Mrs. Carstarphen wrote from North Carolina to the defendant at its home office in the City, County and State of New York, a letter requesting that the amount of her policy be reduced from \$5,000 to \$2,000. The defendant wrote in reply from its home office, that upon receipt by it of the old policy of \$5,000, it would re-write the same for \$2,000, and Mrs. Carstarphen mailed the policy to the defendant at its home office in New York, and on October 17, 1899, at such home office, the defendant re-wrote the said policy for \$2,000, instead of \$5,000, and mailed the re-written policy to Mrs. Carstarphen from the home office of the defendant to her in North Carolina."

It was on these stipulated facts that the learned Court of Appeals of the State of New York held that the defendant insurance company did not continue to do any business within the State of North Carolina after May 18th, 1899, and was not doing business therein at the time of service of process in the suits in question (Opinion, Record, p. 47, fols. 82, 83).

This we submit was grave error. Under the decisions of this Court, to which attention will now be called, the Mutual Reserve Insurance Company continued to do and was at the time of service of process doing insurance business within the State and subject to the jurisdiction of its courts.

The first of these cases to which we will invite attention is that of Connecticut Mutual Life Insurance Co. *vs.* Spratley, 172 U. S., 602. In that case a life insurance company did a general life insurance business in Tennessee from *February 1, 1870, until July 1, 1894*. In 1887 the Legislature of that State passed an act providing that process upon foreign corpo-

rations might be served upon "*any agent of said corporation found within the county where the suit is brought.*" We quote from the statement of facts (172 U. S., p. 607): "On July 1, 1894, the company ceased issuing any new policies in the State of Tennessee, and *withdrew its agents from the State, and on July 21, 1894, notified the State Insurance Commissioner to that effect.* It had, however, a number of policies outstanding in the State, and continued to receive the premiums on these policies through *its agent in another state and to settle, by payment or otherwise, the claims upon those policies as they fell due.*" Under this state of facts this Court held that the company still continued to do business in the State of Tennessee, and was subject to the statutes of that State providing for the manner of service of process upon it; and hence, that the service of process upon an agent sent into the State to adjust a loss, even though he had no express authority from the company to receive process on its behalf, was *sufficient to sustain a judgment in personam.* In its opinion the Court, after pointing out that in order to sustain the judgment "*it is a material inquiry to ascertain whether the foreign corporation is doing business within the State,*" citing *Goldey vs. Morning News*, 156 U. S., 519; *Merchants Mfg. Co. vs. Railway*, 13 F. R., 358, said:

"We think the evidence in this case shows that the company was doing business within the State at the time of this service of process. From 1870 until 1894 it had done an active business throughout the State by its agents therein, and had issued policies of insurance upon the lives of citizens of the State. How many policies it had so issued does not appear. Its action in July, 1894, in assuming to withdraw from the State, was simply a recall of its agents doing business therein, the giving of a notice to the State Insurance Commissioner, and a refusal to take any new risks or to issue any new policies within the State. ITS OUTSTANDING POLICIES WERE

NOT AFFECTED THEREBY, AND IT CONTINUED TO COLLECT THE PREMIUMS UPON THEM AND TO PAY THE LOSSES ARISING THEREUNDER, AND IT WAS DOING SO AT THE TIME OF THE SERVICE OF PROCESS UPON ITS AGENTS. * * * IT CANNOT BE SAID WITH TRUTH, AS WE THINK, THAT AN INSURANCE COMPANY DOES NO BUSINESS WITHIN A STATE UNLESS IT HAVE AGENTS THEREIN WHO ARE CONTINUOUSLY SEEKING NEW RISKS, AND IT IS CONTINUING TO ISSUE NEW POLICIES UPON SUCH RISKS.

HAVING SUCCEEDED IN TAKING RISKS IN THE STATE THROUGH A NUMBER OF YEARS, IT CANNOT BE SAID TO CEASE DOING BUSINESS THEREIN WHEN IT CEASES TO OBTAIN OR ASK FOR NEW RISKS OR TO ISSUE NEW POLICIES, WHILE AT THE SAME TIME ITS OLD POLICIES CONTINUE IN FORCE, AND THE PREMIUMS THEREON ARE CONTINUOUSLY PAID BY THE POLICYHOLDERS TO AN AGENT RESIDING IN ANOTHER STATE, AND WHO WAS ONCE THE AGENT IN THE STATE WHERE THE POLICYHOLDER RESIDED."

It need scarcely be pointed out that in the case cited it was essential to the maintenance of jurisdiction that the Insurance Company was as a fact doing business in the State at the time of service of process. There was no stipulation that the authority of any State Commissioner or local agent to receive process, should continue after the company had withdrawn from the State until all its liabilities were settled. There was nothing except the fact *simpliciter* that the company continued to engage in business within the confines of the State. This Court held on the identical facts that are stipulated in the record in the case at bar that the Insurance Company did continue to transact business.

The learned Court of Appeals does not attempt to distinguish this case on the proposition for which it is cited. It merely points out that (Record, p. 49),

"the action was brought in the Courts of Tennessee upon policies issued for the benefit of residents of that State while the company was regularly engaged in doing business there and before its attempt to withdraw, and

service in said action was made upon a conceded representative of the company who had come into the State for the purpose of adjusting and settling losses under said policies. It was held that under the circumstances of that case the company was doing business within the State, and that service was properly made upon it in the manner indicated."

The illogicality of the attempted distinction is quite apparent. It would be deciding that an insurance company was and was not doing business in the State on the same facts that the company would *continue doing business* within the State and subject to the jurisdiction of its Courts as to citizen A who had a policy of insurance in it, but not as to citizen B, who had not. Carried to its logical conclusion, it would subject a foreign manufacturing corporation to suits arising out of the local business, even after it had withdrawn from the State and ceased to do all business therein, and this, in the absence of any stipulation between the State and corporation to that effect.

This Court did not intend to announce any such doctrine. The excerpt from its opinion above quoted negatives any such claim. To hold otherwise would be not only to ignore the plain words of the opinion but to overlook entirely the distinction between a corporation engaged in insurance and one engaged in interstate commerce. This Court's opinion was fully in accord with the rule laid down in *Hooper vs. California*, 155 U. S., 648; *Paul vs. Virginia*, 8 Wall., 168, and analogous cases, and its decision in the *Spratley* case has its foundation in the proposition that the Insurance Company was subject to jurisdiction of the State courts because it was continuing to do business therein.

Any doubt that might have existed (if any such could exist) as to the doctrine announced by this Court in the *Spratley* case, was laid at rest by the case of *Mutual Reserve Fund Life Association vs.*

Phelps, 190 U. S., 147. In that case prior to October 10, 1899, the Mutual Reserve Fund Life Association had done a general insurance business in the State of Kentucky. By the Kentucky statutes it was provided that foreign insurance companies should file with the Insurance Commissioner of that State an authority to receive process in any action brought in the State, and in compliance with this statute the insurance company filed such a power of attorney. THIS POWER OF ATTORNEY WAS NOT, EITHER BY ITS TERMS OR UNDER THE STATUTE, IRREVOCABLE. In October, 1899, the Insurance Commissioner canceled the license of the company to do business in the State, and from and after that date the association had no agent or agents in the State of Kentucky and did no new business whatever in the State. The company thereupon went through the form of revoking the authority of the Commissioner (see printed transcript of record in Phelps's case on appeal to Supreme Court, at p 4, par. 5). Thereafter and in February, 1900, Phelps commenced an action in the State Court of Kentucky. The only service made was upon the Insurance Commissioner. This Court held that this judgment was valid, basing its opinion upon the fact that so long as the company was doing business within the State the power of attorney was irrevocable. The Court said:

"IT IS STIPULATED BETWEEN THE PARTIES THAT OUTSTANDING POLICIES EXISTING BETWEEN THE ASSOCIATION AND CITIZENS OF KENTUCKY WERE CONTINUED IN FORCE AFTER THE ACTION OF THE INSURANCE COMMISSIONER ON OCTOBER 10, 1899, AND THAT ON SAID POLICIES THE ASSOCIATION HAD COLLECTED AND WAS COLLECTING DUES, PREMIUMS AND ASSESSMENTS. IT WAS, THEREFORE, DOING BUSINESS WITHIN THE STATE "

The Court further said (p. 158):

"It is true in this case the Association did not voluntarily withdraw from the State, but

was in effect by the State prevented from engaging in any new business. Why this was done is not shown. It must be presumed to have been for some good and sufficient reason, and it would be a harsh construction of the statute that, because the State had been constrained to compel the Association to desist from engaging in any further business, it also deprived its citizens who had dealt with the Association of the right to obtain relief in its courts. We conclude, therefore, that the service of summons on the Insurance Commissioner was sufficient to bring the Association into the State court, and there being nothing else to impeach the judgment it must be considered as valid."

The facts as to doing business were stipulated in the Phelps case. For the convenience of the Court we quote from the record in the Phelps case (see Phelps Record on Appeal to this Court, p. 33, fol. 42):

"It is agreed between the complainant and defendant that the outstanding policies existing between the Mutual Reserve Fund Life Association and citizens of Kentucky were continued in force after the action of October 10th, 1899, of the Insurance Commissioner of the State of Kentucky (*i. e.*, revoking license of company and excluding it from the State, p. 35). That said policies were in force continuously up to and including the time of the hearing of the motion to quash the service of the summons, and that on said policies the association had collected and were collecting dues, premiums and assessments."

This was through an agent out of the State. A comparison of this with the stipulated facts in the present case quoted above (Record, pp. 9-11) discloses that they are identical. On no theory of law could the judgment in the Phelps case be sustained as one *in personam* and awarded effect outside the State where it was recovered except on a finding that the insurance company was at the time of the

service of the process, as a fact, doing business therein and subject to personal service. This Court's decision in this respect was in logical accord with its former opinions.

The facts in this case at bar are identical, except that we have the additional acts of doing business in the State set out in paragraphs 16 to 19 (fols. 17-19). Therefore at the time of service of process on which these judgments were recovered the defendant company was within the borders of the State of North Carolina and *doing business* therein.

Could defendant company be within the State for the purpose of doing business and without it for the purpose of jurisdiction? Could it avoid, while it continued within the jurisdiction, the statutes of the State of North Carolina, providing the method of service of process in "any lawful action?" Could it revoke its power of attorney to the Commissioner of Insurance to receive on its behalf "all lawful process in any action" (fol. 10) while it continued to conduct business therein? We submit it could not.

The Court of Appeals of New York State again did not attempt to avoid the binding effect of this decision on the point cited. It missed entirely its rationale. The only distinction sought was that the plaintiff in the Phelps case was a local policyholder. The sophistry of this has already been pointed out.

Let us turn now to another case decided by this Court:

Birch vs. Mutual Reserve Insurance Co., (200 U. S., 612).

In the Birch case the plaintiff was the assignee of seven judgments recovered against the same defendant in the State of North Carolina and the process in each one of those actions was served upon the Insurance Commissioner of North Carolina after the attempted revocation, pursuant to the same statute of North Carolina and the same power of attorney

filed by the defendant corporation with the Commissioner of Insurance of that State. In the Birch case the same facts as here in regard to the acts of the defendant corporation within the State of North Carolina after the attempted revocation of the power of attorney were stipulated.

It is unnecessary to quote them, but it may be said that the stipulated facts in regard to the companies acts in North Carolina after the attempted withdrawal, in this case, were copied from and are identical with those in the Birch record (see Record in Birch case on Appeal in this Court, pp. 20, 22, fols. 33-35; Record here, pp. 9-11, par. 11th to 19th).

These facts the Court found in the Birch case constituted a continuance of the business within the State.

I find, said Judge Gaynor "that subsequent to the 20th day of May, 1899, the defendant continued to do business in said State, *but it did not have agents* in said State soliciting new business therein and the defendant was doing insurance business in said State at the time of the service of process in the several suits wherein the judgments were recovered which are sued on in this action" (Record in Birch case to this Court, p. 12, fol. 22).

The Appellate Division affirmed this judgment on the same ground, basing its judgment on the Spratley and Phelps cases (91 App. Div. of State of N. Y., 384).

The Court said:

"In this case the learned trial Court has found upon sufficient evidence that subsequently to May 20, 1899, the defendant continued to do business in the State of North Carolina, and was doing business at the time of the service of process in the several suits wherein the judgments were recovered which were sued on this action. It is true that the defendant did withdraw its agents from the State and cease to solicit new business, but it continued to collect premiums and to pay

losses on its old policies, and to compromise and adjust claims arising thereon in the State." And, after citing the Spratley and the Phelps cases, continued:

"It necessarily follows that the revocation of a power of attorney was without effect so far as regards the contracts represented by the plaintiff's judgment, and that the Insurance Commissioner, so long as the defendant continued to transact the business of insurance within the State, remained the defendant's agent for the service of the process upon which the validity of that judgment depends" (Record, Birch case, fol. 290, p. 186).

This was affirmed by the Court of Appeals without opinion (181 N. Y., 583). Upon appeal by the defendant to this Court, this Court on December 18, 1905, affirmed the judgment. Its opinion is as follows (200 U. S., 612):

"In Error to the Supreme Court of the State of New York.
(December 18th, 1905).

PER CURIAM:

"Judgment affirmed, with ten per cent. damages, in addition to interest and costs (Mutual Reserve Fund Life Association *vs.* Phelps, 190 U. S., 147; Connecticut Mutual Life Insurance Company *vs.* Spratley, 172 U. S., 602; Egan *vs.* Hart, 165 U. S., 188; Richardson *vs.* L. & N. Railroad Co., 169 U. S., 128; Young *vs.* Valentine, 177 N. Y., 347; Woodward *vs.* Mutual Reserve Fund Life Insurance Co., 178 N. Y., 485; Birch *vs.* Same, 181 N. Y., 583; 91 App. Div., 384)."

It is significant that the Supreme Court in affirming this judgment expressly approved the opinion of the Appellate Division in the Birch case (91 A. D., 384).

We submit these authorities are controlling. They establish where an insurance company goes into a state and makes contracts of insurance, it does not cease to do business simply because it withdraws its agents and solicits no new business. Continuing to

collect premiums on the old policies, is continuance of business. These are the stipulated facts here and are alone sufficient to sustain the jurisdiction of the North Carolina Courts to render the four judgments under discussion. When to these are added the additional specific acts of local business done within the State after the attempted withdrawal (See Record, pp. 10-11, Par. 15-19) there can be no doubt that the company continued doing business.

It being settled that defendant was doing business in North Carolina, and subject to be sued in the courts of that State according to the statutory provisions relative to acquiring jurisdiction, it was immaterial where the cause of action sought to be enforced therein arose.

There are two elements necessary to authorize a court to render judgment. It must have jurisdiction (1) of the parties, and (2) of the subject matter. Where the cause of action arose is only material in determining whether the Court has jurisdiction of the subject of the action.

The courts of North Carolina acquired jurisdiction of the person of the defendant through service of process on the Insurance Commissioner. This is settled law here.

It is conceded that Wadsworth, the plaintiff, who recovered these four judgments in North Carolina, was at all times a citizen and resident of that State (fols. 36, 38, 40, 42, 43, 44, 46 and 47), and that the Superior Court, in which the same were recovered, is a court of general jurisdiction (p. 11, fols. 19-20).

By the statute of North Carolina that court had jurisdiction in actions brought against foreign corporations by *residents of that State* "*for any cause of action*" (fol. 20).

The court, therefore, had jurisdiction both of the parties and the subject of the action (see *Shields v. Life Insurance Co.*, 119 N. C., 380).

That latter was an action based upon a policy of insurance issued to a resident of Alabama by an Ohio corporation doing business in North Carolina,

and assigned to a resident of North Carolina; it was held that the Superior Court of North Carolina had jurisdiction.

It is not material, therefore, that the suits instituted by Wadsworth were based on contracts made by defendant with residents of states other than North Carolina and assigned to a resident of North Carolina. Under the stipulated facts, it must be conceded that the Superior Court had jurisdiction of such cause of action at the suit of a resident.

Defendant's whole argument in the Court of Appeals was upon the assumption that the said four suits were instituted in the North Carolina Court by non residents of that State. If such were the fact, it might well be argued that, under the statute, the Superior Court of North Carolina had no jurisdiction of the subject matter. The argument, however, is contrary to the stipulated facts here. It is stipulated that the plaintiff Wadsworth in these four Carolina suits was a *citizen and resident of North Carolina, and that the various claims were duly assigned to him before suit* (see fols. 35, 38, 39, 42, 43, 46). There is no evidence in this record that these assignments were collusive or fraudulent; nor is there any fact in this record tending to show that the various non-resident policyholders who sold and assigned these causes of action, retained any interest in the same. The facts in the record are that Wadsworth, a citizen of North Carolina at the time of the institution of these suits, was the sole party interested therein. If the assignments were fraudulent or collusive, that question could easily have been raised in North Carolina. The question presented here, therefore, is, could a citizen and resident of North Carolina avail himself of the statutory provisions of that State respecting the method of service of process on a foreign insurance company doing business in the State, in an action in which its courts concededly had jurisdiction?

It being shown that the company was doing business within the State at the time of the service of process, and that the Superior Court of North Carolina had jurisdiction of an action in favor of a resident of the State, based on a contract entered into outside the State, the only inquiry remaining is, was the service of process, pursuant to the statute, on a sufficiently representative agent? It is immaterial whether the agent served had *express* authority to receive the particular process. It is enough that he was an agent of the company for any purpose and was sufficiently representative in character (see *Life Ins. Co. vs. Spratley*, 172 U. S., 602). Under the decisions in the *Birch* and *Phelps* cases by this Court, it must be taken as settled that the Insurance Commissioner of North Carolina was the expressly authorized agent of the defendant to receive process at least in all actions based upon North Carolina policies at the time of the service of process here. Could it matter whether he had express authority to receive this particular process? The statutes of North Carolina gave him full power to receive process in all suits, and even admitting defendant's contention that his express authority to receive process on all suits except those based on North Carolina policies, was revoked, he still remained a sufficiently representative agent to receive service of process within the State. Taken in connection with the further fact of sending, as provided for in the statute, a copy of the process and notice thereof to the home office of the company and receipt thereof by the defendant, it must be admitted that one of the chief objects of all such kinds of service, namely, notice and knowledge on the part of defendant of the commencement of suit against it, is provided for (see *Spratley* case, 172 U. S., 613; *Pope* case, 87 N. Y., 140; *Heller* case, 70 N. Y., 223; *Case on Appeal*, fols. 135, 150, 164 and 180).

We do not admit that the attempted revocation was effective to revoke the Insurance Commissioner's power to receive process on any lawful action.

So long as the defendant continued to do business in the State, it will be presumed to have assented to be sued within the State by service on the Insurance Commissioner, and is estopped from showing either that it has not filed the requisite authority or that it has revoked it. In *Railroad Co. v. Harris* (12 Wall., 65) it is said:

“One of these conditions may be that it shall consent to be sued there. If it do business there, it will be presumed to have assented and will be bound accordingly.” See also, *Erman v. Insurance Co.* (1 Fed. Rep., 71); *Berry v. Indemnity Co.* (46 Fed. Rep., 439); *Plate Glass Co. vs. The Fire Insurance Co.* (55 Fed. Rep., 27); *Old Wayne, &c., Co. v. Flynn* (66 N. E. Rep., 57); *Stewart v. Harmon* (98 Fed. Rep., 190); *Railway Co. v. Whitton* (13 Wall, 270-285); *Hayden v. Mills* (9 Fed. Rep., 270); *Wilson v. Hunter* (7 Fed. Rep., 455).

We submit, therefore, that the judgment of the learned Court of Appeals of New York, in so far as it refused to give full faith and credit to these four judgments of the State of North Carolina, was erroneous, in disregard of the plaintiff's rights under the Constitution, and should be reversed.

Let us pass now to the consideration of the second contention.

We claim that:

Even if it be assumed (*arguendo*) that the defendant company in good faith withdrew from North Carolina and ceased to do any business therein after May 18, 1899, it was still liable to be sued in the courts of North Carolina in any action or legal proceed-

ing, and the Insurance Commissioner was, at the time of the service of process therein, the agent of the defendant for the purpose of service in any action or legal proceeding of every nature of which the courts of North Carolina had jurisdiction.

By the terms of the statute and the power of attorney filed by defendant, the Insurance Commissioner's authority was to continue so long as the company had outstanding liabilities in the State (Rec., p.). That it had such liabilities at the time of service of process in the four cases in question is admitted (fol.). Hence, by the statute and the terms of defendant's agreement, the Commissioner had full authority to receive process.

But it is claimed by the defendant that a fair and reasonable construction of the Willard Act (the law of 1889) limits the right of the Commissioner of Insurance to receive process on behalf of defendant to suits on contracts of insurance entered into *prior* to the attempted revocation.

The answer is that there is no such limitation in the words of the act.

The statute states that a foreign insurance company seeking to do business in that State shall "appoint the Insurance Commissioner or his successor its true and lawful attorney, upon whom all lawful processes *in any action or* legal proceeding against it may be served, and therein shall agree that *any lawful process* against it which may be served upon its said attorney shall be of the same force and validity as if served on the company" (p. 5, fols. 8-9), and the power of attorney filed by defendant company contained the same provision (p. 6, fol. 10).

The same broad provision was contained in the prior laws of this State enacted in 1876 and 1883. The law of 1883 read, "*Any legal process affecting*

the applicant" (fols. 5-6), and that of 1876 read, "Any civil process" (fol. 4).

We submit that the policy of the State of North Carolina as shown in these acts is manifest—that so long as foreign insurance corporations should continue to do business or have outstanding liabilities therein, service of process "*in any action or legal proceeding*" of which the courts of that State had jurisdiction, could be made on such company by service on the Insurance Commissioner.

It is an unreasonable construction of such a statute to limit it to claims arising on policies made in the State of North Carolina prior to the attempted revocation.

Suppose a resident of South Carolina had taken out a policy in defendant company prior to the attempted revocation and subsequently became a resident and citizen of North Carolina, is it reasonable to hold that the statute has no application and affords no protection to him?

Assume a policy issued in New Jersey in favor of a resident of North Carolina as beneficiary, on the death of the policyholder, would the North Carolina beneficiary be without the statute, powerless to sue in the courts of that State?

Suppose that after the attempted revocation a policy had been issued and mailed in New York to a citizen of North Carolina, would he or his widow, the beneficiary, have no rights to sue thereon under this act? Yet this is the construction asked for by defendant here.

Is it reasonable to suppose the courts of North Carolina would so discriminate among its citizens?

We contend that in the absence of any express limitation in the statute, no such arbitrary, forced or illogical construction of this broad statute will be adopted here.

We submit, however, that the Courts of North Carolina have construed the statute broadly and held it to apply to all causes of action *owned by its*

citizens, no matter where the contract was entered into.

By rendering judgment in these cases the courts of North Carolina have, by necessary implication, construed the statute to mean that it clothed the Insurance Commissioner with power to receive process on *all claims* and was not limited to claims arising out of insurance contracts entered into prior to May, 1899.

Clearly the State of North Carolina had the right to prescribe such conditions as it saw fit before allowing a foreign corporation to do business within its borders.

Anglo-American Prov. Co. vs. Prov. Co., 169 N. Y., 506, 510.

Hooper vs. California, 155 U. S., 648.

The State had the power to make the statute and power of attorney broad enough to authorize the Insurance Commissioner of that State to receive process *in all actions of every nature of which* its courts had jurisdiction.

Aldrich vs. Blachford, 177 Mass., 371, and cases cited.

That such was its intention is shown by the broad words of the statutes and the practical construction of them by its courts.

Moreover, this Court has given a broad construction to the statute by holding that it applied to policies taken out *long prior* to its passage.

Furthermore, any such defense should have been raised in North Carolina. If defendant sought a construction of the statutes of that State more limited than the wording thereof would imply, it should have raised the question there; having failed to do so, it is concluded here by the judgment against it.

And finally as voicing such a purpose, we call attention to the Crag Act passed at the same session of the North Carolina legislature as the Willard Act (in question). By its terms all foreign insurance

companies were required to domesticate, thus establishing a permanent local forum. The argument of the Court of Appeals of New York that it was the limited purpose of such statutes to protect policyholders who had contracted on the faith thereof, is not accurate. The reported cases construing similar statutes show that they have a more extended mission. It is to protect all its citizens who *have claims against the company and give them a local forum to try them, that said act was passed.*

Decisions in accord with plaintiff's contention have been reached by the courts of other States and the Federal courts in construing similar statutes.

Youmans vs. Title Insurance Co., 67 Fed. Rep., 282.

Under the law of Massachusetts a foreign corporation, before transacting business in that State, was required to appoint the commissioner of corporations its attorney,

"upon whom all lawful process in any action or proceeding against it may be served and in such writing shall agree that * * * the authority shall continue in force so long as any liability remains outstanding against the company in this commonwealth" (Act Mass., 1884, Ch. 330).

In April, 1890, defendant, a foreign insurance company filed such power of attorney, following the words of the statute.

In March, 1891, the company withdrew from the State, transacted no further business therein and notified the Commissioner to that effect. Thereafter a suit was instituted by a citizen of New York against defendant company in Massachusetts, and process was served on the Commissioner. It appeared that there were outstanding liabilities of the company in the State.

Held (1) that the courts of Massachusetts had jurisdiction of action between non-residents, and (2) That the authority of the Insurance Commissioner

to receive process in such a suit continued so long as liabilities remained outstanding.

The Court, after holding that it had jurisdiction of suits between non-residents, said:

"This decision (referring to *Johnson vs. Ins. Co.*, 132 Mass., 432) places a non-resident plaintiff upon the same footing as citizens of Massachusetts with respect to suits brought against foreign corporations under the act of 1884. The defendant availed itself of the privilege of this law in April, 1890. So far as the present question is concerned it is immaterial when it ceased to do business in the State. The important inquiry is when it ceased to have any liability in the State, for so long as any such liability exists it has consented to be sued here. * * * I see no escape from the conclusion that the Court has jurisdiction of this case."

In *Johnson vs. Ins. Co.* (132 Mass., 432, the Court, in construing the above act, said:

"ITS OBJECT IS SIMPLY TO PROVIDE FOR SERVING UPON SUCH COMPANIES 'ALL LAWFUL PROCESS IN ANY ACTION OR PROCEEDING' AGAINST THEM. THE WORDS 'ALL LAWFUL PROCESSES IN ANY ACTION OR PROCEEDING' MUST BE HELD TO INCLUDE ALL ACTIONS WHICH MIGHT LAWFULLY BE BROUGHT AGAINST A COMPANY THUS HAVING A DOMICILE OR BUSINESS IN THIS COMMONWEALTH. IT IS ALSO TRUE THE MAIN PURPOSE OF THE STATUTE IS TO SECURE TO OUR OWN CITIZENS THE BENEFIT OF OUR LAWS AND TRIBUNALS IN REGARD TO CONTRACTS MADE WITH FOREIGN INSURANCE COMPANIES WHO DO BUSINESS IN THIS STATE, AND IT CONTAINS PARTICULAR PROVISIONS WHICH CLEARLY INDICATE THIS GENERAL PURPOSE. BUT IT IS TRUE OF ALL OUR STATUTES APPLICABLE TO OUR CITIZENS THAT THEIR PRIMARY OBJECT IS THE BENEFIT OF OUR OWN CITIZENS AND THE SECURITY AND PROTECTION OF THEIR RIGHTS. WE HAVE, HOWEVER, ALWAYS EXTENDED THE PRIVILEGES OF OUR LAWS TO NON-RESIDENTS, AND OPENED OUR COURTS TO THEIR LITIGATION, IF THE DEFENDANT CAN BE FOUND HERE (Anc. Chart., 91, 192; *Robert vs. Knights*, 7 Allen, 449, 452."

In the case just quoted plaintiff was a resident of Delaware; defendant was a New Jersey fire insurance corporation, doing business in Massachusetts.

The contract sued upon was made in *Delaware*, covering property there situated.

The only service of process was on the Massachusetts Commissioner. It is held the Massachusetts court had jurisdiction.

And in *Wilson vs. Fire Alarm Co.* (149 Mass., 24), in construing the same statute, the Court, of which Justice Holmes was then a member, said:

"There is no doubt, under the agreement made by the corporation in accordance with this statute, for the purpose of enabling it to do business within the commonwealth, that 'so long as any liability remains outstanding against the company in this commonwealth' the service made in this cause (*i. e.* on the Commissioner) is sufficient to enable the Court to render a personal judgment against the company which would be held valid in other jurisdictions as well as in this" (citing 18 How. (U. S.), 404; 96 U. S., 369; 106 U. S., 350; 129 Mass., 444). Similarly under an Indiana statute the same result was reached.

Mooney vs. Buford Mfg. Co., 72 Fed. Rep., 32.

The headnote reads as follows:

"The Indiana statute of 1883 makes it unlawful for any foreign insurance company to do business in that State until it has filed with the Auditor of State a copy of a resolution of its directors covenanting that in any suit against the company process may be served on its agents within the State 'with like effect as if such company was chartered, organized or incorporated within the State'; and further agreeing that such service may be made 'while any liability remains outstanding against such company in the State'; held, that a foreign insurance company which has complied with these requirements may be

validly served in the manner above prescribed not only in suits UPON OBLIGATIONS ARISING OUT OF BUSINESS DONE WITHIN THE STATE, BUT IN SUITS UPON CONTRACTS OF INSURANCE MADE AND PAYABLE IN OTHER STATES."

In its opinion the Court says:

"The clause in the Indiana statute 'while any liability remains outstanding against such company in this State,' like the corresponding phrase in the statute of Massachusetts, is a limitation only of the time within which the company may be bound by service upon its agents within the State, and NOT A RESTRICTION UPON THE CHARACTER OF SUITS IN WHICH PROCESS AGAINST IT MAY BE ISSUED."

See to same effect under a Pennsylvania Statute, *Darlington vs. Rogers* (36 Legal Int., 115).

The learned Court of Appeals of New York State in overruling this contention, based upon the wording of the statute, placed its decision on two grounds:

(1) "That the policy involved and voiced in statutes of this character was the determination upon the part of the State that it would not allow a foreign insurance company to exercise the privilege of doing business within its limits without securing to its citizens who might there be dealt with, an arrangement by which they might institute actions and enforce their contracts and policies at home and without being driven into some foreign state where the company might have its origin and principal place of business"; and

(2) "That neither the non-resident policyholders nor the resident assignee had acted in reliance on the statute, hence the defendant was not estopped to revoke the power of attorney in question."

The answer to the first contention has already been made. The plain wording of the statutes of North Carolina and the power of attorney disclose a contrary policy. Had such been the policy of the State, it would have by express words limited the

scope of the power of attorney to claims arising out of the business done within the State. The fact that it did not, voiced the State's determination to hold the foreign insurance company subject to the jurisdiction of its courts at the suits of all its citizens. *Expressio unius exclusio alterius.*

Further, that such is not the general policy of such statutes in other states is shown by the decisions already quoted.

The second argument involves a confusion between the parties to the power of attorney and its beneficiaries.

The power of attorney was a contract between the State and the insurance company. The insurance company appointed the Commissioner of Insurance its continuing agent for the receipt of process in all actions of every nature and description. It was to continue so long as it had outstanding claims against it in the State.

The *quid pro quo* was the State's permission to come into the State and do business.

The company has done so. *It has reaped the full harvest of that business, and at the times in question was enjoying the fruit.* Will it be permitted to repudiate its plain contract on the ground that the particular citizen of the State of North Carolina who seeks to hold it cannot establish an estoppel or reliance thereon? To require a plaintiff in each case before he could sustain the authority of the Commissioner to establish an estoppel would be to render nugatory the provisions of this remedial and salutary statute for service of process.

Is the power of attorney in question subject to the application of the old doctrine that one not coupled with an interest is revocable? We submit not.

This is a contract between a sovereign State, acting as the representative of all its citizens, and a corporation, by which the corporation has obtained a lucrative business.

This alone is sufficient to sustain the power of attorney and forbid its revocation.

VIII.

The judgment of the Court of Appeals of the State of New York in so far as it reversed the judgment heretofore awarded in favor of the plaintiff by the sum of \$8,792.42, with interest from May 2nd, 1902, should be reversed, and the plaintiff awarded judgment against the defendant for the full amount claimed, including the said sum of \$8,792.42, with interest from May 2nd, 1902.

Respectfully submitted,

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